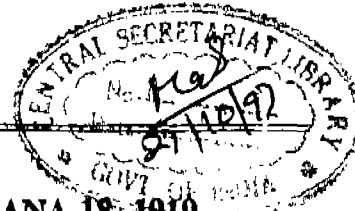




भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY



सं. 32]
No. 32]

नई दिल्ली, शनिवार, अगस्त 9, 1997/श्रावण 18, 1919

NEW DELHI, SATURDAY, AUGUST 9, 1997/SHRAVANA 18, 1919

इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विधि और न्याय मंत्रालय
(विधि कार्य विभाग)
(न्यायिक अनुभाग)
सूचना

नई दिल्ली, 11 जुलाई, 1997

MINISTRY OF LAW AND JUSTICE
(Department of Legal Affairs)
(Judicial Section)

NOTICE

New Delhi, the 11th July, 1997

का.आ. 1927—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री अश्विनी कुमार मिश्रा, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन इस बात के लिए दिया है कि उसे बोलानगीर, जिला बोलानगीर, (उड़ीसा) में व्यवसाय करने के लिये नोटरी के रूप नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिनों के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(182)/97—न्यायिक]
यू.के. झा, सक्षम प्राधिकारी एवं
अपरविधि सलाहकार

S.O. 1927.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Aswani Kumar Mishra, Adv. for appointment as a Notary to practise in Bolangir, Distt. Bolangir, (Orissa).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(182)/97-Judl.]
U.K. JHA, Competent Authority & Addl. Legal Adviser

सूचना

नई दिल्ली, 15 जुलाई, 1997

का.आ. 1928—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्रीमती जमीला सुहम्मद, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन हम बात के लिए दिया है कि उसे बंगलूर (कर्नाटक) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(196)/97-व्यापिक]

यू.के. झा, सक्षम प्राधिकारी एवं
अपर विधि सलाहकार

NOTICE

New Delhi, the 15th July, 1997

S.O. 1928.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Smt. Jameela Mohammed Adv. for appointment as a Notary to practise in Bangalore (Karnataka).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(196)/97-Judl.]

U. K. JHA, Competent Authority & Addl. Legal Adviser

सूचना

नई दिल्ली, 15 जुलाई, 1997

का.आ. 1928—नोटरीज नियम, 1956 के नियम 6 के अनुसरण में सक्षम प्राधिकारी द्वारा यह सूचना दी जाती है कि श्री खजान सिंह, एडवोकेट ने उक्त प्राधिकारी को उक्त नियम के नियम 4 के अधीन एक आवेदन हम बात के लिए दिया है कि उसे बंगलूर (कर्नाटक) में व्यवसाय करने के लिये नोटरी के रूप में नियुक्ति पर किसी भी प्रकार का आक्षेप इस सूचना के प्रकाशन के चौदह दिन के भीतर लिखित रूप से मेरे पास भेजा जाये।

[सं. 5(197)/97-व्यापिक]

यू.के. झा, सक्षम प्राधिकारी एवं
अपर विधि सलाहकार

NOTICE

New Delhi, the 15th July, 1997

S.O. 1929.—Notice is hereby given by the Competent Authority in pursuance of Rule 6 of the Notaries Act, 1956 that application has been made to the said Authority, under Rule 4 of the said Rules, by Sh. Khazan Singh, Adv. for appointment as a Notary to practise in Kaithal (Haryana).

2. Any objection to the appointment of the said person as a Notary may be submitted in writing to the undersigned within fourteen days of the publication of this notice.

[No. F. 5(197)/97-Judl.]

U. K. JHA, Competent Authority & Addl. Legal Adviser

गृह मंत्रालय

(पुनर्वास प्रभाग)

नई दिल्ली, 3 जून, 1997

का.आ. 1930—केन्द्र सरकार 1980 के अधिनियम, 61 तथा 1984 के अधिनियम, 35 द्वारा यथा संशोधित लोक परिसर (अवैध कब्जेदारों का निष्कासन) अधिनियम, 1971 (1971 का 40) के खंड 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा पुनर्वास प्रभाग, गृह मंत्रालय में श्रवर सचिव, श्री सुरजीतसिंह को, सरकार का राजपत्रित अधिकारी होने के नाते, उक्त अधिनियम के उद्देश्य हेतु, संपदा अधिकारी नियुक्त करती है। वे राष्ट्रीय राजधानी क्षेत्र दिल्ली में स्थित प्लॉट सं. ई-51-52, कीर्तिनगर, नई दिल्ली में स्थित लोक परिसरों के संबंध में उक्त अधिनियम के तहत एक संपदा अधिकारी की शक्तियों का प्रयोग तथा कर्तव्यों का निष्पादन करेंगे।

[सं. 1(2)/97-बंदोबस्त]

एन.डी. जार्ज, निदेशक

MINISTRY OF HOME AFFAIRS

(Rehabilitation Division)

New Delhi, the 3rd June, 1997

S.O. 1930.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), as amended by Act 61 of 1980 and Act 35 of 1984, the Central Government hereby appoints Shri Surjit Singh, Under Secretary, Rehabilitation Division, Ministry of Home Affairs, being a Gazetted Officer of the Government, to be an Estate Officer for the purpose of the said Act. He shall exercise the powers and perform the duties of an Estate Officer under the said Act in respect of Public Premises situated at the Plot No. E-51-52, Kirti Nagar, in the National Capital Territory of Delhi.

[No. 1(2)/97-Settlement]

N. D. GEORGE, Director

नई दिल्ली, 30 जुलाई, 1997

का.आ. 1931—सरकारी भवन (अनाधिकृत कब्जे की वेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा नीचे सारणी के कालम (1) में उल्लिखित अधिकारी को, भारत सरकार का राजपत्रित अधिकारी होने के कारण, उक्त अधिनियम के प्रयोजनार्थ सम्पदा अधिकारी के पद पर नियुक्त करती है और एतद्वारा यह निदेश देती है कि उपर्युक्त अधिकारी उक्त सारणी के कालम (2)

में विनिर्दिष्ट सरकारी भवनों की श्रेणियों के संबंध में उपयुक्त अधिनियम के अन्तर्गत सम्पदा अधिकारियों को प्रदत्त शक्तियों का प्रयोग करते हुए दिए गए कार्यों का निर्वहन करेगा :—

सारणी

नाम तथा रैंक	सरकारी भवनों की श्रेणियाँ
श्री बेल प्रसाद गुरुंग उप समादेष्टा, महानिदेशालय, असम राइफल शिलोंग-793011	भारत के राजपत्र, भाग-II, खंड-3, उप खंड (ii) में का.आ. 2507 दिनांक 20 अगस्त, 1996 द्वारा अधिसूचित किये जा चुके भवनों के अतिरिक्त त्रिपुरा राज्य में असम राइफल के नियं- त्रणाधीन सभी सरकारी भवन ।

निर्मला देव, डेस्क अधिकारी

[संख्या II/27013/32/96 (पी एफ -V)]

MINISTRY OF HOME AFFAIRS

New Delhi, the 30th July, 1997

S.O.1931.—In exercise of powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupation) Act, 1971 (46 of 1971) the Central Government hereby appoints the officer mentioned in the Column (1) of the table below, being a gazetted Officer of the Government of India, to be Estate Officer for the purpose of the said Act and hereby directs that the said officer shall exercise the powers conferred, and perform the duties imposed, on Estate Officers under the said Act in respect of the Categories of Public Premises specified in Column (2) of the said table:—

TABLE

Name and rank	Categories of public premises
Shri Bel Prasad Gurung Deputy Commandant Directorate General Assam Rifles Shillong-793011	All public premises held on charge of Assam Rifles in the State of Tripura in addition to premises already notified in Gazette of India Part-II Section 3 Sub Section (ii) S.O. 2507 dated 20 August, 1996.

[No. II/27013/32/96-PF.V]

Nirmala Dev, Desk Officer

कामिक, लोक शिक्षादत्त तथा पेंशन मंत्रालय

(कामिक और प्रशिक्षण विभाग)

आदेश

नई दिल्ली, 17 जुलाई, 1997

का.आ. 1932-केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम 25) की धारा 3 की उपधारा (1) के साथ पठित धारा 6 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए सं. 3/वि.वि. 6015/97-पु.आ.-6977 दिनांक 1 जुलाई, 1997 द्वारा प्राप्त बिहार राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों एवं अधिकारों का विस्तार, भारतीय बंड रूढ़िवा 1860 की धारा 302/307/34 (1860 का अधिनियम 45) और आरुध अधिनियम, 1959 (1959 का अधिनियम 54) की धारा 27 के अन्तर्गत पंजीकृत प्राथमिक सूचना सं. 54/97 दिनांक 31-3-97 पुलिस थाना सिवान, बिहार जो श्री चन्द्रसेखर प्रसाद सिंह की हत्या से संबंधित है, के अन्वेषण के लिये तथा वरित एक या अधिक अपराधों से संबंधित तथा उनसे संबंधित प्रत्यक्ष, अप्रत्यक्ष और परोक्ष तथा उन्हीं तथ्यों से उत्पन्न होने वाले ऐसे ही संबंधधार के अनुश्रम में किये गये कोई अन्य अपराध जो अभियुक्तों द्वारा किये गये ह, प्रासंगिक अधिनियम के प्रावधानों के अधीन दण्डनीय अपराधों के अन्वेषण कालिये, सम्पूर्ण बिहार राज्य पर करती है।

[संख्या 228/34/97-ए.वी.डी.-II]

हरी सिंह, अधर सचिव

MINISTRY OF PERSONNEL, P. G. AND PENSIONS
(Dept. of Personnel & Training)

ORDER

New Delhi, the 17th July, 1997

S.O. 1932.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the Government of Bihar vide Government of Bihar, Home (Police) Department Notification No. 3/Vivid-6015/97-II (P)-6971 dated 1-7-97, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for the investigation of the offences punishable under section 302/307/34 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and 27 of Arms Act, 1959 (Act No. 54 of 1959) and any attempts, abetments and conspiracies in relation to or in connection with the said offences and any other offences committed in the course of the same transaction of arising out of the same fact or facts in regard to FIR No. 54/97 dated 31-3-97 registered at Police Station Siwan, Bihar relating to alleged murder of Sh. Chandra Sekhar Prasad Singh.

[No. 228/34/97-AVD. II]

HARI SINGH, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय उत्पाद शुल्क आयुक्त का कार्यालय

मदुरै, 23 जून, 1997

सं. 2/97-सीमा शुल्क (एन.टी.)

का.आ. 1933-सीमा शुल्क अधिनियम, 1962, धारा 9 जो कि भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली के अधिसूचना सं. 33/94-सीमा शुल्क (एन.टी.) दिनांक 1-7-94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं एतद्वारा तमिलनाडु के कामराजर जिला, श्रीविल्लिपुत्तूर, तालूका, के "मानगेसरी गांव" को सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता हूँ।

[फा. : IV/16/115/97-टी.-1]

टी.आर. राधाकृष्णन, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

OFFICE OF THE COMMISSIONER OF CENTRAL
EXCISE

Madurai, the 24th June, 1997

NOTIFICATION

No. 2/97-CUSTOMS (NT)

S.O. 1933.—In exercise of the powers conferred on me under Section 9 of the Customs Act, 1962 (52 of 1962) read with Notification No. 33/94-Customs (NT) dated 1-7-1994 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare "Managaseri Village", Srivilliputhur Taluk, Kamarajar District in the State of Tamilnadu to be a warehousing station under the Customs Act, 1962 (52 of 1962), for the purpose of setting up of 100 percent Export Oriented Undertakings.

[F. C. No. IV/16/115/97-T.I]

T. R. RADHAKRISHNAN, Commissioner

मदुरै, 1 जुलाई, 1997

सं. 3/97-सीमा शुल्क (एन.टी.)

का.आ. 1934-सीमा शुल्क अधिनियम, 1962, धारा 9 जो कि भारत सरकार, वित्त मंत्रालय राजस्व विभाग, नई दिल्ली के अधिसूचना सं. 33/94-सीमा शुल्क (एन.टी.) दिनांक 1-7-94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं एतद्वारा तमिलनाडु के मदुरै जिला, दक्षिण मदुरै तालूका, के "वलयनकुलम गांव" की सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता हूँ।

[फाइल IV/16/119/97-टी.-1]

टी.आर. राधाकृष्णन, आयुक्त

Madurai, the 1st July, 1997

No. 3/97-CUSTOMS (NT)

S.O. 1934.—In exercise of the powers conferred on me under Section 9 of the Customs Act, 1962 (52 of 1962), read with Notification No. 33/94-Customs (NT) dated 1-7-1994 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare "Valayankulam Village", South Madurai Taluk, Madurai District in the State of Tamilnadu to be a warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up of 100 percent Export Oriented Undertakings.

[F. C. No. IV/16/119/97-T.1]

T. R. RADHAKRISHNAN, Commissioner

(आर्थिक कार्य विभाग)

नई दिल्ली, 23 जुलाई, 1997

का.आ. 1935-केन्द्रीय सरकार, राजभाषा (संच के शासकीय प्रयोजनों के लिए प्रयोग) नियमावली, 1976 के नियम 10 के उप नियम (4) के अनुसरण में वित्त मंत्रालय, आर्थिक कार्य विभाग के प्रशासनिक नियंत्रण में स्थित भारतीय साधारण बीमा निगम की अनुपंगी कंपनी नेशनल इश्योरेंस कंपनी लिमिटेड के निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है : —

1. डायरेक्ट एजेंट शाखा-7

एन.टी.सी. हाउस,

एन. मोरारजी मार्ग,

बेलाड ईस्टेट,

मुम्बई-400038

2. डायरेक्ट एजेंट शाखा-8,

कमानी चेंबर्स,

बेलाड ईस्टेट,

मुम्बई-400001

[सं. 11013/12/97-हि.का.क.]

सुधीर कुमार वर्मा, अवर सचिव

(Department of Economic Affairs)

New Delhi, the 23rd July, 1997

S.O. 1935.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976, the Central Government, hereby, notifies the following offices of the National Insurance Co. Ltd. a subsidiary company of the General Insurance Corporation of India, under the administrative control of Ministry of Finance, Department of Economic Affairs, where of more than 80 percent of staff have acquired working knowledge of Hindi.

1. Direct Agent Branch-VII,
N. T. C. House, N. Morarji Marg,
Belard Estate,
Mumbai-400038.

2. Direct Agent Branch-VIII,
Kamani Chambers, Belard Estate,
Mumbai-400001

[No. 11013/12/97-H.I.C.]
S. K. VERMA, Under Secy.

नई दिल्ली, 23 जुलाई, 1997

का.आ. 1936—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिये प्रयोग) नियमावली, 1976 के नियम 10 के उप नियम (4) के अनुसरण में वित्त मंत्रालय, आर्थिक कार्य विभाग के प्रशासनिक नियंत्रण में स्थित भारतीय साधारण बीमा निगम की अनुषंगी कंपनी वि न्यू इंडिया एश्योरेंस कंपनी लिमिटेड के निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारिकुन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. मंडल कार्यालय, जम्मू-350700
2. मंडल कार्यालय, फिरोजपुर-351500
3. शाखा कार्यालय, कोटकपुरा-351502
4. शाखा कार्यालय, फरीदकोट-351504
5. मंडल कार्यालय, मोहाली-352300
6. मंडल कार्यालय, मण्डी-352400
7. शाखा कार्यालय, मनाली-352401
8. शाखा कार्यालय, पालमपुर-352402
9. शाखा कार्यालय, विश्वासपुर-352404
10. शाखा कार्यालय, धर्मशाला-352405
11. शाखा कार्यालय, बड़ी ब्राह्मणा-352501
12. शाखा कार्यालय, मोंगा-352600
13. शाखा कार्यालय, जगरावा-352603
14. मंडल कार्यालय, खन्ना-352700
15. शाखा कार्यालय, लुधियाना-352901
16. शाखा कार्यालय, डण्डारीकलान-352902
17. शाखा कार्यालय, मनीमाजरा-353000
18. शाखा कार्यालय, लुधियाना-352900

[सं. 11013/12/97-हि.का.क.]

सुधीर कुमार वर्मा, अवर सचिव

New Delhi, the 23rd July, 1997

S.O. 1936.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (use for official purpose of the Union) Rules, 1976, the Central Government, hereby, notifies the following offices of the New India Assurance Co. Ltd. a subsidiary company of the General Insurance Corporation of India, under the administrative control of Ministry of Finance, Department of Economic Affairs, where of more than 80 per cent of staff have acquired working knowledge of Hindi :—

1. Divisional Office, Jammu-350700
2. Divisional Office, Firozpur-351500
3. Branch Office, Kotakpoora-351502
4. Branch Office, Faridkot-351504
5. Divisional Office, Mohali-352300
6. Divisional Office, Mandi-352400
7. Branch Office, Manali-352401
8. Branch Office, Palampur-352402

9. Branch Office, Vilaspur-352404
10. Branch Office, Dharamshala-352405
11. Branch Office, Badi Brahmna-352501
12. Branch Office, Monga-352600
13. Branch Office, Jagrawa-352603
14. Divisional Office, Khanna-352700
15. Branch Office, Ludhiana-352901
16. Branch Office, Dhandari Kalan-352902
17. Branch Office, Manimazara-353000
18. Branch Office, Ludhiana-352900.

[No. 11013/12/97-HIC]

S. K. VERMA, Under Secy.

(राजस्व विभाग)

प्रादेश

नई दिल्ली, 17 जुलाई, 1997

स्टाम्प

का.आ.1937:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है, जो पावर प्रिंट कारपोरेशन आफ इंडिया, लिमिटेड, नई दिल्ली द्वारा जारी किए गए :—

(1) डी-0000001 से डी-1068550 (4-निर्गम) की विशिष्ट संख्या वाले एक-एक हजार रु० अंकित मूल्य के मात्र एक सौ छह करोड़ पचासी लाख पचास हजार रुपये के कुल मूल्य के 17% अर्धवार्षिक देय कर-योग्य बंधपत्रों;

(2) डी-1068551 से डी-1431150 (4-निर्गम) की विशिष्ट संख्या वाले एक-एक हजार रुपये अंकित मूल्य के मात्र छत्तीस करोड़ छत्तीस लाख रु० के कुल मूल्य के 17.5% अर्धवार्षिक देय कर-योग्य बंधपत्रों;

(3) डी-1431151 से डी-3500000 (4-निर्गम) की विशिष्ट संख्या वाले एक-एक हजार रुपये अंकित मूल्य के मात्र दो सौ छह करोड़ अठ्ठासी लाख पचास हजार रुपये के कुल मूल्य के 17.75% अर्धवार्षिक देय कर योग्य बंधपत्रों; और

(4) ई-0000001 से ई-2000000 (4-निर्गम) की विशिष्ट संख्या वाले एक-एक हजार रुपये अंकित मूल्य के मात्र दो हजार करोड़ रुपये के कुल मूल्य के 15.75% अर्धवार्षिक कर-योग्य बंधपत्र;

सुरक्षित विमोच्य अपरिवर्तनीय पावर प्रिंट कर-योग्य बंधपत्रों के रूप में वर्णित प्रोमिसरी नोटों के स्वरूप के बंधपत्रों पर उक्त अधिनियम के तहत प्रभावी है।

[सं० 9/97-स्टा० का० सं० 14/25/96-वि०क० और का० सं० 14/17/97/वि० क०]

एस० कुमार, अवर सचिव

(Department of Revenue)

ORDER

New Delhi, the 17th July, 1997

STAMPS

S.O. 1937.—In exercise of the powers conferred by clause (a) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as secured redeemable non-convertible Powergrid taxable bonds bearing distinctive numbers—

- (i) D-0000001 to D-1068550 (IV-issue) of 17% payable half yearly taxable bonds of face value of rupees one thousand each of the aggregate value of rupees one hundred six crores eighty five lakh fifty thousand only; and
- (ii) D-1068551 to D-1431150 (IV-issue) of 17.5% payable half yearly taxable bonds of face value of rupees one thousand each or the aggregate value of rupees thirty six crores twenty six lakh only; and
- (iii) D-1431151 to D-3500000 (IV-issue) of 17.75% payable half yearly taxable bonds of face value of rupees one thousand each of the aggregate value of rupees two hundred six crore eighty eight lakh fifty thousand only; and
- (iv) E-0000001 to E-2000000 (IV-issue) of 15.75% payable half yearly taxable bonds of face value of rupees one thousand each of the aggregate value of rupees two hundred crore only;

issued by Power Grid Corporation of India Limited, New Delhi are chargeable under the said Act.

[No. 9/97-Stamp F. No. 14/25/96-ST&
F. No. 14/17/97-ST]
S. KUMAR, Under Secy.

आदेश

नई दिल्ली, 17 जुलाई, 1997

स्टाम्प

का.आ. 1938:—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा मै. सिम्पलैक्स कन्क्रीट पाइल्स (इं) लि० कलकत्ता को मात्र पन्द्रह लाख बीबीस हजार आठ सौ छहत्तर रु० का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त कम्पनी द्वारा सम मूल्य पर जारी किए जाने वाले 1 से 2031818 की विशिष्ट संख्या के ग्यारह

करोड़ अठारह लाख बीबीस हजार दो सौ बीबीस रु० के समग्र मूल्य के 55-55 रु० के अंकित मूल्य के 20,33, 168-17 प्रतिशत सुरक्षित अधिक विकल्पी परिवर्तनीय ऋण-पत्रों पर स्टाम्प शुल्क के कारण प्रभाय है।

[सं. 897-स्टाम्प-फा. सं. 15/7/97-बि.क.)]

एस. कुमार, अधर सचिव

ORDER

New Delhi, the 17th July, 1997

STAMPS

S.O. 1938.—In exercise of the powers conferred by clause (b) of sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M/s. Simplex Concrete Piles (India) Limited, Calcutta to pay consolidated stamp duty of rupees fifteen lakh twenty four thousand eight hundred seventy six only chargeable on account of the stamp duty on 20,33,168—17% Secured Partly Optionally Convertible Debentures bearing distinctive numbers from 1 to 2031818 of the face value of rupees fifty five each at par of the aggregate value of rupees eleven crore eighteen lakh twenty four thousand two hundred forty only to be issued by the said company.

[No. 8/97-Stamp F. No. 15/7/97-ST]

S. KUMAR, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 30 जुलाई, 1997

का. आ. 1939 :—केन्द्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, नीचे दी गई सारणी के स्तंभ (1) में उल्लिखित अधिकारी को, जो सरकार के राजपत्रित अधिकारी के समतुल्य रैंक के अधिकारी हैं, उक्त अधिनियम के प्रयोजन के लिए सम्पदा अधिकारी नियुक्त करती है जो सारणी के स्तंभ (2) में विनिर्दिष्ट सरकारी स्थान के प्रयोगों की बाबत, उसकी अधिकारिता की सीमाओं के भीतर, इस अधिनियम द्वारा या उसके अधीन सम्पदा अधिकारी को प्रदत्त शक्तियों का प्रयोग और अधिरोपित कर्तव्य करेगा।

मारणी

परमाणु ऊर्जा विभाग

आदेश

अधिकारी का पदनाम सरकारी स्थान के प्रवर्ग तथा अधिकारिता की स्थानीय सीमा

मुंबई, 6 जून, 1997

(1)	(2)
श्री ए. डी. नाथ, मुख्य महाप्रबन्धक के तकनीकी सचिव, नार्थ ईस्टर्न कोल फील्ड्स, सी. एस. रोड, कोल इंडिया लि., गुवाहाटी—781005	असम और मेघालय राज्यों में नार्थ ईस्टर्न कोल फील्ड्स, कोल इंडिया लिमिटेड के स्वामित्वाधीन अथवा उसके द्वारा पट्टे पर ली गई भूमि, भवन और अन्य स्थावर संपत्ति।

[फा. सं. 43022/3/97—एल. डब्ल्यू.]
(श्रीमती) पी. एल. सैनी, अवर सचिव

MINISTRY OF COAL

New Delhi, the 30th July, 1997

S.O.1939.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of unauthorised Occupants) Act, 1971 (Act 40 of 1971), the Central Government hereby appoints the Officer mentioned in column 1 of the Table below being an Officer equivalent to the rank of Gazetted Officer in the Government, to be estate officer for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on estate officer by or under this Act within the limits of his jurisdiction in respect of the categories of public premises specified in column 2 of the Table:

TABLE

Designation of the Officer	Categories of Public Premises and local limit of jurisdiction
1	2
Shri A.D. Nath, Technical Secretary to Chief General Manager, North Eastern Coalfields, Coal India Limited, C.S. Road, Guwahati-781005	Lands, Buildings and other immovable property owned or taken on lease by North Eastern Coal- fields, Coal India Limited in the states of Assam and Meghalaya.

[No. 43022/3/97-LW]
(MRS), P.L. SAINI, Under Secy.

का. आ. 1940 :—परमाणु ऊर्जा अधिनियम, 1962 (1962 का 33) के खंड 8 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एवं भारत सरकार, परमाणु ऊर्जा विभाग के दि. 9 दिसंबर, 1974 के आदेश सं. 1/2 (2) 74—पीएसयू का अधिक्रमण करते हुए, केन्द्रीय सरकार अनुसूची में प्रदर्शित पदनाम वाले अधिकारियों को अधिनियम के खंड 8 के 2 एवं उपखंड 1 में यथाउल्लिखित अनुसार प्रवेश एवं निरीक्षण संबंधी शक्तियों के उपयोग हेतु एतद्वारा प्राधिकृत करती है।

अनुसूची

1. निदेशक, परमाणु खनिज प्रभाग (एएमडी), हैदराबाद

एवं

2. क्षेत्रीय निदेशक, परमाणु खनिज प्रभाग

[सं. पी. ई. 27 (2)/96—ईआर/1180]

जुधिका पाटणकर, अवर सचिव

DEPARTMENT OF ATOMIC ENERGY

ORDER

Mumbai, the 6th June, 1997

S.O. 1940.—In exercise of the powers conferred by Section 8 of the Atomic Energy Act, 1962 (33 of 1962), and in supersession of the order of the Government of India in the Department of Atomic Energy No. 1/2(2)/74-PSU dated December 9, 1974, the officers whose designation is given in the schedule is hereby authorised by the Central Government to exercise power of entry and inspection and all other powers as mentioned in sub-section 1 and 2 of Section 8 of the Act.

SCHEDULE

1. Director, Atomic Minerals' Division (AMD) Hyderabad, and
2. Regional Directors, Atomic Minerals Division.

[No. AEA/27(2)/96-ER/1180]

JUTHIKA PATANKAR, Under Secy.

आदेश

मुंबई, 30 जून, 1997

का. आ. 1941 :—इस विभाग के दि. 9 मार्च, 1979 के आदेश सं. 1/9(4)/78—ओ एण्ड एम के अनुक्रम में केन्द्रीय सरकार एतद्वारा उपर्युक्त आदेश की 6 वीं पंक्ति में यथा उल्लिखित प्रधान, विकिरण सुरक्षा

प्रभाग का नाम परिवर्तित करके प्रधान, विकिरण भौतिकी एवं परामर्शी प्रभाग करती है, यह इस अधिसूचना के जारी होने की तारीख से प्रभावी होगा।

[स. एईए/27 (1)/97-ई आर/1307]

जुथिका पाटणकर, अवर सचिव

ORDER

Mumbai, the 30th June, 1997

S.O. 1941.—In continuation of this Department's Order No. 1/9(4)/78-O&M dated March 9, 1979, the Central Government hereby change the name of Head, Division of Radiological Protection mentioned in the 6th line of the said order as Head, Radiological Physics & Advisory Division with effect from the date of issue of the notification.

[No. AEA/27(1)/97-ER/1307]

JUTHIKA PATANKAR, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 7 अगस्त, 1997

का.आ. 1942.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पदार्थों से भूमि में उपयोग के अधिकार का अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में और भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 569, तारीख 11 फरवरी, 1994 तथा का.आ. 3251, तारीख 01 दिसम्बर, 1995 को अधिकांश करते हुए नीचे दी गई अनुसूची के स्तम्भ (1) में उल्लिखित प्राधिकारी को, उक्त अनुसूची के स्तम्भ (2) में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्रों के भीतर, उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए, प्राधिकृत करती है, अर्थात् :—

अनुसूची

प्राधिकारी का नाम और पता	अधिकारिता क्षेत्र
(1)	(2)
श्री प्रदीप गोविन्दा चौधरी, उत्कल, बी. सी. एस., ज्येष्ठ भूमि अर्जन अधिकारी, (पश्चिमी बंगाल राज्य से प्रतिनियुक्ति पर), इंडियन ऑयल कॉर्पोरेशन लिमिटेड, हल्दिया बरोनी क्रूड ऑयल पाइप- लाइन परियोजना और हल्दिया- मौरीग्राम-राजबंद की गाथा	पश्चिमी बंगाल राज्य

पादपलाहन से बज-बज तक,
एस. बी. ओ. आफिस कॉम्प्लेक्स,
बासुदेवपुर, डाकघर-प्रखंजनचक,
हल्दिया-721602,
जिला—मिदनापुर (पश्चिमी बंगाल)

[सं. आर-31015/14/97-ओ.आर.-I]

के.सी. कटोच, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 7th August, 1997

S.O. 1942.—In pursuance of clause (e) of section 2 of the Petroleum and Minerals (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) and in supersession of the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 569, dated the 11th February, 1994 and No. S.O. 3251 dated the 01st December, 1995, the Central Government hereby authorises the authority mentioned in column (1) of the Schedule below to perform the functions of the competent authority under the said Act, within areas mentioned in the corresponding entry in column (2) of the said Schedule :—

SCHEDULE

Name and address of the authority	Area of jurisdiction
1	2
Shri Pradip Govinda Chowdhuri WBCS, State of Senior Land Acquisition Officer, West Bengal (on deputation from the Government of West Bengal) Indian Oil Corporation Limited, Haldia-Barauni Crude Oil Pipeline Project and Branch Pipeline of Haldia-Mourigram-Rajbandh to Budge Budge, SDO Officer Complex, Basudebpur, P.O.—Khanjanchak, Haldia -721602, District—Midnapore, West Bengal.	

[No. R-31015/14/97-OR-I]
K.C. KATOCH, Under Secy.

शहरी कार्य और रोजगार मंत्रालय

शहरी विकास विभाग

(दिल्ली प्रभाग)

नई दिल्ली, 21 जुलाई, 1997

का. आ. 1943.—यतः निम्नांकित क्षेत्रों के बारे में कुछ संशोधन, जिन्हें केन्द्र सरकार अधोवर्णिन क्षेत्रों के बारे में दिल्ली वृहद योजना/क्षेत्रीय विकास योजना में प्रस्तावित करती है तथा जिसे दिल्ली विकास अधिनियम, 1956 (1957 का 8) की धारा 44 के प्रावधानों के अनुसार दिनांक 1-10-96 के नोटिस संख्या एफ. 20(6)/89 एम पी द्वारा प्रकाशित किये गये थे, जिनमें उस अधिनियम की धारा 11-क की उपधारा (3) में यथा अपेक्षित आपत्तियों/सुझाव, उक्त नोटिस की तारीख के 30 दिन की अवधि में आमंत्रित किये गये थे।

और यतः प्रस्तावित संशोधनों के बारे में जनता से कोई आपत्तियाँ और सुझाव प्राप्त नहीं हुए हैं और यतः केन्द्र सरकार ने इस मामले के सभी पहलुओं पर सावधानीपूर्वक विचार करने के बाद मास्टर प्लान में संशोधन करने का निर्णय लिया।

अतः अब केन्द्रीय सरकार उक्त अधिनियम की धारा 11-क की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत के राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से दिल्ली की उक्त वृहद योजना में एतद्वारा निम्नलिखित संशोधन करती है।

संशोधन :—

सुप्रीम बोट लायस चैम्बर, भगवान दास रोड स्थित त्रिभुजाकार भूमि के 601.31 वर्ग मीटर हिस्से, जिसका इस्तेमाल इलेक्ट्रिक सब-स्टेशन के रूप में किया जाना है, के विकास नियंत्रण मानकों में निम्नलिखित के अनुसार परिवर्तन किया जाना है :—

- (1) अनुमेय अधिकतम भू आच्छादन 25% से 40%
- (2) अनुमेय न्यूनतम आगुल पृष्ठ भाग 6 मीटर से 4 मीटर।

[सं. के-13011/12/92-डीडी-I बी]

के.के. गुप्ता, अवसर सचिव

MINISTRY OF URBAN AFFAIRS & EMPLOYMENT
(Department of Urban Development)

(Delhi Division)

New Delhi, the 21st July, 1997

S.O. 1943.—Whereas certain modifications which the Central Government proposed to make in the Master Plan for Delhi/Zonal Development plan regarding the areas mentioned hereunder, were published vide Notice No. F. 20(6)/84-MP dated 1-10-1996 in accordance with the provisions of Section 44 of the DD Act, 1956 (6 of 1957), inviting objections/suggestions as required by sub-section (3) of Section 11-A of the said Act within 30 days from the date of the said notice.

And whereas no objections/suggestions were received in this regard to the proposed modification and whereas the Central Government after carefully considering all aspects of the matter, decided to modify the Master Plan.

1887 GI/97

Now, therefore, in exercise of powers conferred by sub-section (2) of Section 11-A of the said Act, the Central Government hereby makes the following modification in the said Master Plan for Delhi with effect from the date of publication of this Notification in the Gazette of India.

MODIFICATION :

The development control norms of an area measuring 601.31 sq. mtr. forming part of triangular piece of land to be used as electric sub-station, Supreme Court Lawyer's Chamber at Bhagwan Dass Road, are changed as under :—

- (i) Permissible maximum ground coverage from 25 per cent to 40 per cent.
- (ii) Permissible minimum front set back from 6 mtrs to 4 mtrs.

[No. K-13011/12/92-DDIB]

K. K. GUPTA, Under Secy.

नागर विमानन और पर्यटन मंत्रालय

(नागर विमानन विभाग)

नई दिल्ली, 24 जुलाई, 1997

का.आ. 1944—केन्द्रीय सरकार, भारतीय विमानपत्तन प्राधिकरण के अधिनियम, 1994 (1994 का 55) की धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा कृषक भारती सहकारिता लि., नई दिल्ली के कार्यकारी निदेशक (वित्त एवं लेखा) श्री बी.डी.वी. प्रसाद राव को जिस दिन से कार्यभार ग्रहण करेंगे उस दिन से पांच वर्षों के लिये भारतीय विमानपत्तन प्राधिकरण में अनुसूची "ख" में 12000-14000 (संशोधित) के वेतनमान में सदस्य (वित्त) नियुक्त करती है।

[संख्या एवी-11015/001/95-बी.बी.]

पी.एस. राधाकृष्ण अवसर सचिव

MINISTRY OF CIVIL AVIATION AND TOURISM

(Department of Civil Aviation)

New Delhi, the 24th July, 1997

S.O. 1944.—In exercise of the powers conferred by section 3 of the Airports Authority of India Act, 1994 (No. 55 of 1994), the Central Government hereby appoints Shri V. D. V. Prasad Rao, Executive Director (Finance and Accounts), in the Krishak Bharati Cooperative Limited, New Delhi as Member (Finance) in the Airports Authority of India in Schedule 'B' scale of pay of Rs. 12,000-14,000 (Revised) for a period of five years from the date of his taking over the charge.

[No. AV-11015/001/95-VB]

P. S. RADHAKRISHNAN, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 8 जुलाई, 1997

का.आ. 1945.—गीत और नाटक प्रभाग में कर्मचारी कलाकार संघों में समूह "ग" पदों को सीधी भर्ती द्वारा भरने के लिये निम्नलिखित चयन समिति के गठन को अनुमोदित किया गया है :—

1. नियुक्ता प्राधिकारी

2. संबंधित क्षेत्र से दूरदर्शन अथवा आकाशवाणी का एक प्रतिनिधि।
3. दो बाहरी असेसर।

[सं. ए-12018/1/95-प्रशा. 2]

मोना शर्मा, निदेशक

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 8th July, 1997

S.O. 1945.—The Constitution of the following Selection Committee has been approved for Group "C" post to be filled up by Direct Recruitment in Song and Drama Division in Staff Artists Cadre :—

1. Recruiting Authority.
2. A representative either from Doordarshan or AIR of the Region.
3. Two outside assessors.

[No. A-12018/1/95-Admn. II]
MONA SHARMA, Director (PP)

शुद्धि पत्र

नई दिल्ली, 16 जून, 1997

का.आ. 1946.—इस मंत्रालय की दिनांक 10-4-97 की समसंख्यक अधिसूचना जिसके द्वारा केन्द्रीय फिल्म प्रमाणन बोर्ड के चैन्नई सलाहकार पैनल का पुनर्गठन किया गया था और दिनांक 21-4-97 से 103 व्यक्तियों को उक्त पैनल का सदस्य नियुक्त किया गया था, में क्रम सं. 28 के सामने "श्री जी.ए.एच.के. घोरी" नाम के स्थान पर "श्री ए.ए. एच.के. घोरी" नाम प्रतिस्थापित किया जाए।

[फा.सं. 809/3/96-एफ(सी)]

आई.पी. मिश्रा, डेस्क अधिकारी

CORRIGENDUM

New Delhi, the 16th June, 1997

S.O. 1946.—In this Ministry's notification of even number dated 10-4-97 reconstituting the Chennai advisory panel of the Central Board of Film Certification and appointing 103 persons as members of the said panel w.e.f. 21-4-97, against S. No. 28 for the name "Shri G. A. H. K. Ghori" the name "Shri A. A. H. K. Ghori" shall be substituted.

[F. No. 809/3/96-F(C)]

I. P. SHARMA, Desk Officer

आदेश

नई दिल्ली, 29 जुलाई, 1997

सांका० 1947.—केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण एवं श्रेणी) नियम, 1965 के नियम 24 के उप-नियम (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राष्ट्रपति एतद्वारा विनिर्दिष्ट करते हैं कि सचिव सूचना

एवं प्रसारण मंत्रालय, दूरदर्शन महाविदेशालय में निर्बमित आधार पर महाविदेशक का पद भरे जाने तक, दूरदर्शन महाविदेशालय के क्षेत्राधिकार में आने वाले सामान्य केन्द्रीय सेवा समूह "क" के पदों के मायने में अपीलित प्राधिकारी के रूप में कार्य करेंगे।

(राष्ट्रपति के आदेश एवं नाम से)

[सं. विविध-1/15/97-सतर्कता]

वि० कृ० जगन्नाथ, प्रवर सचिव

ORDER

New Delhi, the 29th July, 1997

S.O. 1947.—In exercise of the powers conferred by sub-rule (1) of Rule 24 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby specifies the Secretary, Ministry of Information and Broadcasting, New Delhi to act as Appellate Authority in respect of the Group 'D' posts of General Central Service falling under the jurisdiction of the Directorate General of Doordarshan till such time as the post of Director General : Doordarshan is filled up on a regular basis.

(BY ORDER AND IN THE NAME OF THE PRESIDENT)

[No. Misc. I/15/97-Vig.]

V. K. DHINGRA, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 9 जुलाई, 1997

का.आ. 1948.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टूटीकोरिन पोर्ट ट्रस्ट के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-97 को प्राप्त हुआ था।

[सं. एन-44012/3/91-आई०आर० (विविध)]

बी.एम. डेविड, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 9th July, 1997

S.O. 1948.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tuticorin Port Trust and their workman, which was received by the Central Government on 9-7-97.

[No. L-44012/3/91-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
MADRAS

Tuesday, the 4th day of March, 1997

PRESENT:

Thiru S. Thangaraj, B.Sc., L.L.B., Industrial Tribunal.

Industrial Dispute No. 72/1993 and Com. No. 21/93

In I.D. 72/92

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Tuticorin Port Trust, Tuticorin).

BETWEEN

The workmen represented by:

The Secretary,
The Tuticorin Port Mariners' and General Staff Union,
22-A, Pererira Street, Tuticorin-1.

AND

The Chairman,
Tuticorin Port Trust,
Tuticorin.

REFERENCE :

Order No. L-44012/3/91-IR(Misc.), Ministry of Labour,
dated 13-8-92, Government of India, New Delhi.

In Com. No. 21/93 :

S. Thinakaran,
C/o. Tuticorin Port Mariners' and General Staff Union,
28, Kerecote Street, Tuticorin.

AND

The Management of M/s. Tuticorin Port
Trust, Tuticorin-4.

In the matter of reference in the Industrial Dispute
No. 72 of 1992

Complaint under Section 33-A of the Industrial Disputes Act, 1947

This dispute and complaint coming on for final hearing on Tuesday, the 27th day of January, 1997 upon perusing the Claim, counter, and complaint and other material papers on record, and upon hearing of the arguments of Thiru M. Ravindran. A. R. appearing for the Petitioner-union and complainant and of Thiru M. Venkatachalapathy, M. Sriram and S. M. Loganathan, Advocates appearing for the Management, and these disputes having stood over till this day for consideration, this Tribunal made the following :

COMMON AWARD

Government of India, vide their Order No. L-44012/3/91-IR(Misc.), Ministry of Labour, dated 13-8-92, have referred under Section 10(1)(d) of the I.D. Act, 1947 this dispute to this Tribunal, for adjudication of the following issue :

"Whether the action of the management of Tuticorin Port Trust in fixing the seniority of 32 supervisors who were regularised in 1980 below the 5 supervisors regularised in 1985 is justified? If not, to what relief the workmen are entitled?"

On services of notice, both petitioner and respondent appeared before this Tribunal, and filed their claim and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner are as follows.—As per the Central Government Approved Regulations, 1979, for the post of Supervisors, the recruitment rules are 50 per cent by promotion, failing which by transfer or no deputation and 50 per cent direct recruitment failing which by promotion and failing both by transfer or transfer of deputation. The eligible outdoor clerk for promotion to the post of supervisor was with seven years of service in the said grade. For candidate on transfer, the qualification was upper division clerk in the Port with atleast 3 years service in the grade. Preference behind given to those having experience in shipping works. For the candidates who are recruited directly for the post should hold a first class or high second class degree of recognised university. As there was no eligible employees having 7 years of experience as outdoor clerk, the Port Management promoted Tvl. 1. A. Joseph Villavarayar, 2. B. Sethuraman, 3. A. Karmegam, 4. K. Arumugam, 5. S. Ramanathan along with 27 direct recruits. Though the direct recruits satisfied the provisions of regulation rules, the five employees promoted

did not satisfy the said provisions. Those five persons were appointed to the post of Supervisor during 1979-80 on adhoc basis only. The Adhoc appointments have been regularised vide Traffic Manager's letter dated 17-2-86. As these five employees had completed their seven years of service as outdoor clerks on 29-3-85 they were regularised on 29-3-85 only. These employees were not qualified for the promotion of Supervisor during 1980 as per Government approved Regulation 1979. Much against the approved regulation, the Port Management has promoted five outdoor clerks who have not completed even four years of service during 1980, when there were number of upper division clerks with the required qualification for the promotion as Supervisor. As no objection was raised at that time, by taking advantage the Port Management has placed the above said five persons i.e. unqualified outdoor clerks as seniors to the qualified employees and the same has adversely affected the promotional chances of qualified employees. Their ad-hoc service was regularised on 29-3-85 whereas the qualified employees' services were regularised on various dates during the year 1980. The ad-hoc services should not be counted for qualifying service but it continues only for increment. There was no necessity to give promotion on ad-hoc basis when eligible employees were available both direct and transfer. The management has failed to follow the provisions in C.S.R. Vol. II, Appendix 26 Section XI(2). In these circumstances, award may be passed that seniority list published by the Port Management during 1988 was not proper as five unqualified persons have been included in the middle of the list instead of placing them at the end of the list.

4. The main averments found in the counter filed by the respondent are as follows:—As per Tuticorin Port Employees (Recruitment, Seniority and Promotion) Regulations, 1979 ;

(i) 50 per cent promotion—failing which by transfer or on deputation.

(ii) 50 per cent by direct recruitment—failing which by promotion by transfer or transfer on deputation.

Outdoor Clerks with seven years of service are eligible for promotion. Upper Division Clerks in the Port with atleast 3 years service in the grade are eligible for transfer. Preference should be given to those having experience in shipping clerks. For direct recruits, a first or high second class degree of a recognised university was the prescribed qualification. During 1979-80 there was an imperative necessity for filling up the post of Supervisor to cope up with the rapidly increasing operations of the Port. 50 per cent of the vacancies have to be filled up by promotion from the post of outdoor clerks. As there was no outdoor clerk with seven years experience at that time it was decided to reduce the qualifying period of service from seven years to four years, so that experienced persons in the feeder cadre it found suitable can be promoted to that post. An amendment to that regulations to that effect was proved by the Tuticorin Port Trust Board in the meeting held on 19-11-79 in resolution No. 138. Accordingly, 1. A. Joseph Villavarayar, 2. B. Sethuraman, 3. S. Ramanathan were promoted w.e.f. 25-2-80 and K. Arumugam and A. Karmegam were promoted w.e.f. 28-5-80. Five Upper Division Clerks were also appointed to the post of Supervisors adopting transfer method and 27 direct recruits were also appointed. Those five persons were promoted on ad-hoc basis and their promotions and appointments were regularised by the order of the Traffic Manager, Tuticorin Port Trust dated 17-2-86. Their services were regularised from 1985. The services of the direct recruits and transferees were regularised from the date of their appointment. The roster and seniority list will run 1. Promotee/transferee, 2. direct recruit, 3. Promotee/transferee, and 4. direct recruit and so on. The promotees have been assigned positions reserved for promotees in the seniority list of supervisors. Therefore, the seniority position assigned to the grade of the supervisors is in order. According to the instructions issued by Government of India, Department of Personnel and Training dated 3-7-86 and the Government of India, decision no. 153, inter-se seniority among the promotees and direct recruits with reference to the rotation of quotas was reviewed and the practice of keeping vacant slots for being filled up later years, and thereby giving them unintended seniority over promotee etc. who are already in position, was dispensed with. The adhoc promotion was regularised in the year

1985 and prior to the issue of the orders dated 7-2-86 and as such their seniority was fixed accordingly. In view of the above reasons, Industrial dispute may be dismissed.

C. No. 21/93 in I.D. 72/92

5. One Thinakaran an employee has filed this complaint under Sec. 33-A of the I.D. Act, 1947.

6. The main averments found in the complaint are as follows : During 1980, Tvl. 1. A. Joseph Villavarayar, 2. V. Sethuraman, 3. A. Karmegam, 4. K. Arumugam and S. Ramanathan were promoted on adhoc basis to the post of Supervisor. As per Central Government approved Recruitment Rules, the outdoor clerks having seven years of service in that grade alone are eligible for promotion as supervisors. 50% of the post should be filled up by promotion of outdoor clerks failing which by transfer of upper division clerks with atleast 3 years of service or on deputation and 50% by direct recruitment. The 5 outdoor clerks were unqualified for promotion as Supervisors and however they were given adhoc promotions. The Port Management has placed the five unqualified Supervisors as seniors over the qualified candidates. Their services were regularised on 29-3-85 whereas the services of the qualified Supervisors were regularised on various dates during 1980. The adhoc services should not be counted for qualifying service and it can be counted only for increment. As such the persons those who were appointed as per the Approved Recruitment Rules and whose services were regularised in 1980, should have been placed above those five persons. Hence seniority list should be revised accordingly. Challenging the seniority list of supervisors, industrial dispute was raised in 1990 that it was referred by Central Government for adjudication on 13-8-92 that the union filed the claim statement in September 1992 and the management filed counter on 21-9-93. The complainant was one of the senior most persons in the panel of promotion but whereas the respondent-management has promoted one Shri A. Joseph Villavarayar who was junior to the complainant and not entitled for promotion. During the pendency of the industrial dispute, the management has promoted one Shri A. Joseph Villavarayar and thereby the management has violated Sec. 23 of the I.D. Act, 1947, and hence this complaint is filed under Sec. 33-A of the I.D. Act. The order of promotion dated 31-7-93 passed in favour of Shri A. Joseph Villavarayar promoting him as Warf Superintendent may be cancelled.

7. The main averments found in the counter filed by the management are as follows : The senior most Supervisor Sh. A. Joseph Villavarayar was promoted as Warf Superintendent on adhoc basis against the short term vacancy as per the seniority list of Supervisors applicable to the complainant immediately before the commencement of the proceedings. Therefore, question of violation of Sec. 33 of the I. D. Act, does not arise and the complaint is not maintainable. The complainant Sh. S. Thinakaran, joined as Supervisor in the Port on 17-6-80. Whereas Sh. A. Joseph Villavarayar joined as Supervisor on 25-2-80. Sh. Joseph Villavarayar was senior to S. Thinakaran according to the seniority list of Supervisors prepared in accordance with Sub-regulation 2 of regulation XI of Tuticorin Port Employees (Recruitment, Seniority, Promotion) Regulations 1979 and general principle for determination of seniority issue by Ministry of Home Affairs in O.M. 9/11/55-APS. dt. 22-12-1969. Shri Joseph Villavarayar was promoted as warf superintendent on adhoc basis based on the seniority list of Supervisors. Sh. Joseph Villavarayar the senior most Supervisor was promoted as Warf Superintendent on adhoc basis against short term vacancy prior to the commencing of the industrial dispute. The respondent did not alter the conditions of service etc. relating to the particular cadre after the commencement of industrial dispute. Therefore, there was no violation of Sec. 33 of the I.D. Act. There is absolutely no necessity to cancel the promotion of Joseph Villavarayar. Hence the complaint may be dismissed.

8. The Industrial dispute and the complaint were heard together as per the Joint memo filed by both parties. One witness was examined on the side of the union and one witness was examined on the side of the management. Exs. W-1 to W-6 have been marked on the side of the union and Exs. M-1 to M-12 have been marked on the side of the management.

9. The Point for our consideration in I.D. 72/92 is : Whether the action of the management of Tuticorin Port Trust in fixing the seniority of 32 Supervisors who were regularised in 1985 below the 5 supervisors regularised in 1985 is justified. If not to what relief the workmen are entitled ?

9a. The point for our consideration in C. No. 21/93 is whether the complaint is maintainable and if so whether promotion order dated 31-7-93 is liable to be cancelled.

10. The Point (In I.D. 72/92) : This industrial dispute has been raised against the management of Tuticorin Port Trust, Tuticorin by workmen represented by Tuticorin Port Mariners and General Staff Union, Tuticorin questioning the validity of the fixation of seniority of 32 supervisors who were regularised in 1980, below the five supervisors regularised in 1985. Both the parties have admitted the rule and procedure to be followed in the promotion and appointment of supervisors. For the post of supervisors as per the Central Government Approved Regulation 1979, the recruitment has to be done 50% by promotion failing which by transfer or on deputation and other 50% by direct recruitment failing which by promotion and failing both by transfer or transfer on deputation. Those who are eligible for promotion in the case of outdoor clerks are with seven years of service in the grade in the Port, for transfer of upper division clerk in the Port with atleast three years service in the grade in the Port. The direct recruits should possess a first or high second class degree of a recognised university. These are the prescribed qualification for the post of Supervisors. We are not very much concerned with the Upper Division Clerks in the Port who were promoted as Supervisors and the direct recruits. The main question lies regarding the promotion given to the five outdoor clerks. (i) A. Joseph Villavarayar (ii) B. Sethuraman (iii) S. Ramanathan (iv) K. Arumugam and (v) A. Karmegam. Among them, Joseph Villavarayar, Sethuraman and Ramanathan were promoted to the post of Supervisors on 25-2-80 whereas Arumugam and Karmegam were promoted w.e.f. 28-5-80. These two dates are found in para 7 of the counter filed by the management. As the appointment has been made by the management, there is no much dispute regarding the dates on which the promotion as Supervisors to these five persons came into effect. The main contention of the petitioner-union is that though the other persons recruited by way of transfer or direct should be seniors to these five persons, but whereas the management has fixed the seniority of these five persons at the middle of the list and fixing such a seniority is not as per the rules. The union has questioned the validity of their selection as well as the seniority fixed in the case of those five supervisors from the category of outdoor clerks.

10a. As per the rules, outdoor clerks who is eligible for promotion as Supervisor should have seven years of service in the grade in the Port of Tuticorin. These five employees did not satisfy the qualification of seven years on the date of their promotion. The main contention of the petitioner-union is that their promotion itself is not in accordance with rules. However the reference is only for fixing up the seniority of those five persons and not to decide the validity of their promotions as Supervisors. When you see that these five persons do not have the required qualification of seven years service as outdoor clerks in the Tuticorin Port, the said qualification has been revised by the management. The management in the counter has admitted that during 1979-80 there was an imperative necessity for filling up the post of supervisors to come up with the rapidly increasing operations of the Port. The first channel for filling up the post of supervisors is by promotion from the post of outdoor clerks. 50% of the vacancies have to be filled up through this channel. However, it is clear from the evidence available on record that none of the outdoor clerks were qualified enough to get their promotion as Supervisors. In a meeting of the Board of Trustees of Tuticorin Port Trust held on 19-11-79, Resolution No. 138 was passed reducing the period of service in the case of outdoor clerks from 7 years to 4 years to promote as a Supervisor. However such a resolution cannot override the rules. Though it was contended on the side of the management at the time of arguments that subsequently the Central Government have amended rules reducing the service experience to 5 years from 7 years would go in favour of

the amendment made by the Board of Trustees under Ex. M-10. However, the Central Government had amended the regulation reducing the period to 5 years only. The Board of Trustees have reduced the period of experience to 4 years which is not in accordance with the amendment subsequently carried out by the appropriate Government. At the time of passing the resolution Ex. M-10, there was no such amendment. Therefore, the reduction of qualifying service from seven years to four years by the Board of Trustees by way of resolution cannot be said to be valid.

11. Ex. W-5 is the copy of the provisions contained in C.S.R. Vol. II Appendix 29 Section XI(2) says :

"Whenever an appointment is made on adhoc basis the fact that the appointment is adhoc and that such appointments will not bestow as the person a claim for regular appointment and that adhoc service rendered would not count for the purpose of seniority in that grade and for eligibility for promotion, confirmation should be spelt out clearly in the order of appointment."

From the above provision, it is clear that the Adhoc services rendered would not count for the purpose of seniority. The management have relied on a decision in THE DIRECT RECRUIT CLASS-II ENGINEERING OFFICERS' ASSOCIATION and ORS. Vs. STATE OF MAHARASHTRA & ORS. (AIR 1990 SC P. 1607) the Apex Court held :

"44. (a) Once the incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(b) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with rules, the period of officiating service will be counted."

12. It was argued on the side of the management that as the initial promotion of these 5 persons as Supervisor was not made by following the procedure laid down by the rules. Their continuance in the post without any interruption will regularisation would given them the benefit of counting their officiating service. However, Clause A in the said ruling will be more applicable to the instant case. Though Clause A spoke about the appointment made in accordance with rule, it follows the case where the initial appointment is only adhoc and not according to the rules and made as a stop gap arrangements. The officiation in such post cannot be taken into account for considering seniority. Clause A Para 44 of the said ruling is more applicable to the instant case. Here even an admitted by the management in para 10 of their counter, that the appointment to the post of supervisors was made on adhoc basis only and the appointments were regularised in 1986, vide the order of Traffic Manager, Tuticorin Port Trust dated 17-2-86. While placing reliance on para B it is clear that the management admits that the appointment was not made by following procedure laid down in the rules. The said admission shows the lacuna in the case of the management. They also admitted that the appointment was made on adhoc basis and not in accordance with rules. When such is the case, the candidates who got their promotion in such a manner cannot have seniority over the other candidates who have been appointed following the rules. The above decision deals with seniority. In the instant case, the very question which arises for our consideration is one of fixing seniority on the date of their promotion and not fixing the seniority on a later date wherein their officiating service can be counted for the purpose of seniority. As the very question has arisen regarding fixing of their seniority on the date of their promotion, the other question regarding their officiating services need not be considered. However, as the management have admitted that these 5 persons were promoted on adhoc basis as per the above ruling when once they were promoted on adhoc basis and not in accordance with rules. The period of their service cannot be taken into account for considering their seniority. Therefore, the management cannot take shelter under the above ruling of the Apex Court.

13. It is clear even from the admission of the management that promotion of these 5 employees was only adhoc and not according to the rules, whereas the other persons who were promoted either by way of direct recruitment or through transfer had the eligible qualification for the said post. When qualified people were available, for the post of Supervisors the seniority of these persons cannot be fixed above such qualified candidates. As the validity of the promotion given to these 5 employees is not in question and what has to be adjudicated as per the reference is only the fixation of seniority of these 5 employees it has to be held that the fixation of seniority of 32 supervisors who were regularised in 1980 below the five supervisors regularised in 1985 is not justified. The list marked as Ex. M-5 shows that these five employees Tvl. A. Joseph Villavarayar, B. Sethuraman, S. Ramanathan, K. Arumugam and A. Karmegam are kept in Sl. Nos. 10, 12, 14, 16 and 18 respectively. They should have their places at the end of the list as Sl. Nos. 44 to 48. The reference is answered accordingly.

14. The Point : (in C. No. 21/93) . This complaint has been filed by one S. Thinakaran saying that by promoting Sh. A. Joseph Villavarayar who was his junior as Superintendent during the pendency of I.D. 72/92 the management has contravened the provisions of Sec. 33 of the I.D. Act. The management has raised the objection regarding the maintainability of the complaint itself. The management has contended that Sh. A. Joseph Villavarayar the senior most Superintendent was promoted as Warf Superintendent on adhoc basis against short term vacancy as per the seniority list of Supervisors applicable to the complainant immediately before the commencement of the proceedings and therefore there was no contravention of Sec. 33 of the I.D. Act, with result to complaint will not lie. The complainant has filed this complaint only on the basis of I.D. 72/91 referred to this Tribunal by the Government of India on 13-8-92. The exact date on which this I.D. has been raised before the Labour Officer has not been stated by the complainant. When the reference was made on 13-8-92 the I.D. could have been raised in the year 1991 or 1990. But however, Thinakaran the complainant herein joined as Supervisor in the Port on 17-6-80 whereas A. Joseph Villavarayar joined on 25-2-80. So, it is clear that Villavarayar joined as Supervisor earlier to the complainant S. Thinkaran. However, the said seniority fixed in the case of Villavarayar under Ex. M-5 is being questioned in I.D. 72/92. During the pendency of the said case, A. Joseph Villavarayar was given adhoc promotion by an order dated 31-7-93. Joining report was given by Traffic Manager on 4-8-93. Further the adhoc promotion was extended by three orders dated 3-11-93, 3-12-93 and 12-1-94. The copies of these documents have been filed in the complaint but not marked. The management has stated that Sh. A. Joseph Villavarayar being the seniormost Supervisor was promoted as Warf Superintendent. Ex. M-5 shows that Sh. A. Joseph Villavarayar was fixed in the 10th rank of the list. It was held in I.D. 72/92 such fixation of seniority is not in accordance with rules and therefore the ranking of Sh. A. Joseph Villavarayar who was the seniormost among the five employees should come to Sl. No. 44 in Ex. M-5 list. If that is so, on the date of adhoc promotion on 31-7-93 as Warf Superintendent, he was not the seniormost Supervisor. Such a promotion is not in accordance with his seniority. The next man one D. Arunachalam who was Sl. No. 11 in Ex. M-5 ought to have been promoted on 31-7-93 instead of Sh. A. Joseph Villavarayar. The adhoc promotion given to Joseph Villavarayar is against rules and therefore the same cannot be upheld.

15. The seniority of Sh. A. Joseph Villavarayar and four others was questioned in I.D. 72/92. When the question of seniority was pending adjudication before the Industrial Tribunal, Madras the management asking for granted that A. Joseph Villavarayar as the seniormost supervisor gave the adhoc promotion. When the very seniority of Joseph Villavarayar was pending adjudication, the subsequent promotion given to him by treating him as seniormost was in contravention of Sec. 33 of the I.D. Act. It is clear that during the pendency of I.D. before the Industrial Tribunal, Madras, the employer in regard to the matter connecting with the dispute altered to the prejudice of the workmen concerned in such dispute. Such alteration in the matter connected with the pending dispute by the employer contravenes Sec. 33 of the I.D. Act. Though the complainant Thinakaran who happened to be a junior Sh. A. Joseph Villavarayar has filed

this complaint, it should not be taken that promotion of A. Joseph Villavarayar has latered the service condition of Sh. S. Thinakaran Sec. 33-A of the I.D. Act, 1947 says :

"In regard to any matter connected with the dispute altered to the prejudice of the workmen concerned in such dispute."

The complaint will lie because the promotion of A. Joseph Villavarayar has prejudiced the case of the workmen concerned in I.D. 72/92. During the pendency of that I.D. the promotion given to A. Joseph Villavarayar ought to have gone to the next employer in Sl. No. 11 by name Arunachalam. Therefore, the said promotion given to Joseph Villavarayar has caused prejudice to the workmen concerned in that dispute. Therefore, the complaint will lie.

For the foregoing reasons, the complaint is maintainable and the adhoc promotion given to Joseph Villavarayar as Warf Superintendent on 31-7-93 and the extensions made thereafter in the said post are liable to be set aside.

I.D. 72/92

In the result, award is passed holding that the fixation of seniority of 32 supervisors who were regularised in 1980 below the five supervisors regularised in 1985 is not justified. The five employees should have their places at the end of the list in Sl. Nos. 44 to 49. No costs.

C. No. 21/93 In I.D. 72/92

In the result, award is passed cancelling the promotion order S-4/17/92-EI dated 31-7-93 issued by the Management promoting Sh. A. Joseph Villavarayar, as Warf Superintendent and the subsequent extensions passed. No costs.

Dated, this the 4th day of March 1997.

S. THANGARAJ, Industrial Tribunal
WITNESSES EXAMINED

For Workmen :

W.W.1 : Thiru M. Ravindran.

For Management :

M.W.1 : Thiru C. D. Venkateswaran.

DOCUMENTS MARKED

For Workmen :

Ex. W-1/17-2-86 : Copy of Order of regularisation of adhoc appointment of Supervisors in Traffic Department, Tuticorin Port Trust.

Ex. W-2/22-7-86 : List showing confirmation in the grade of Supervisor in the Tuticorin Port Trust (copy).

Ex. W-3/22-7-86 : Copy of letter from petitioner-union to Assistant Labour Commissioner.

Ex. W-4/22-7-86 : Copy of seniority list of supervisors.

Ex. W-5/22-7-86 : Extract of the Provisions contained in CSR Vol II Appendix 29 Sec. XI(2).

Ex. W-6/22-7-86 : Copy of Extract of Schedule of Tuticorin Port Trust Recruitment Regulations 1979.

For Management :

Ex. M-1/1-4-79 : Copy of recruitment rules for the post of supervisor.

Ex. M-2/19-11-79 : Copy of the amendment to recruitment rules.

Ex. M-3/19-11-79 : Copy of Extract of Govt. of India decision no. 153 & 154 below Art. 26 vide memo 35014/2/80/Estt. dt. 7-2-86.

Ex. M-4/19-11-79 : Extract of Government of India O.M. No. 22011/7/86 Estt. (D), dated 3-7-86.

Ex. M-5/19-11-79 : Copy of seniority list of supervisors as on 1-4-86.

Ex. M-6/19-11-79 : Extract of Regulation 11(2) of Recruitment Seniority, Promotion Regulation of Tuticorin Port Trust.

Ex. M-7/22-7-86 Confirmation in the grade of Supervisor in the Tuticorin Port Trust (copy).

Ex. M-8/19-11-79 : Agenda Item No. 3 of Board Meeting No. 8 (copy).

Ex. M-9/19-11-79 : Draft recruitment rules for the post of supervisor (copy).

Ex. M-10/19-11-79 : Unconfirmed minutes of Proceedings of Meeting No. 8 of 79-80 of the Board of Trustee (copy).

Ex. M-11/20-1-76 : Appointment order as outdoor clerk in Traffic Department (copy).

Ex. M-12/22-4-76 : Copy of appointment orders Outdoor clerks in Proceeding No. T. (E)76/F64/D-701.

नई दिल्ली, 9 जुलाई, 1997

का. प्रा. 1949-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबन्धन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. 1, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-97 को प्राप्त हुआ था।

[सं. एल-31011/04/96-आई. प्रार. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1949.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Government on 9-7-97.

[No. L-31011/04/96-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

PRESENT :

Shri Justice R. S. Verma, Presiding Officer
Reference No. CGIT-35 of 1997

PARTIES :

Employers in relation to the Management of
Mumbai Port Trust.

AND

Their Workmen

APPEARANCES :

For the Management—Shri M. B. Anchan,
Advocate

For the Workman—No appearance

STATE : Maharashtra

Mumbai, dated the 26th day of June, 1997

AWARD

Shri M. B. Anchan for Management. He has filed his authority. None for union. Notices for 26-6-97 were sent to the parties by registered post on 29-5-97. Notices have not been received back. There is a presumption of service. The union is absent inspite of notice. No claim has been filed by the union.

In the above circumstances, I adjourn the matter sine-die. It shall be treated to be as disposed off for statistical purposes only. The matter may be restored to its original number as and when the union files a claim and supply copy thereof to the management. Thereafter the matter may be revived and taken up for hearing under intimation to the management.

R. S. VERMA, Presiding Officer

नई दिल्ली, 9 जुलाई, 1997

का.आ. 1950.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबन्धनत्व के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. -1, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-97 को प्राप्त हुआ था।

[सं. एल-31012/3/97-आई.आर. (विविध)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1950.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Government on 9-7-97.

[No. L-31012/3/97-JR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI PRESENT :

Shri Justice R. S. Verma, Presiding Officer

Reference No. CGIT-37 of 1997

PARTIES :

Employers in relation to the Management of Mumbai Port Trust

AND

Their Workmen

APPEARANCES :

For the Management—Shri M. B. Anchan, Advocate

For the Workman—No appearance

STATE : Maharashtra

Mumbai, dated the 26th day of June, 1997

AWARD

Shri M. B. Anchan for Management. He has filed his authority. None for union. Even the workman is not present. Notices for 26-6-97 were sent to the parties by registered post on 29-5-97. Notices have not been received back. There is a presumption of service. The union is absent inspite of notice. No claim has been filed by the union.

In the above circumstances, I adjourn the matter sine-die. It shall be treated to be as disposed off for statistical purposes only. The matter may be restored to its original number as and when the union files a claim and supply copy thereof to the management. Thereafter the matter may be revived and taken up for hearing under intimation to the management.

R. S. VERMA, Presiding Officer

नई दिल्ली, 9 जुलाई, 1997

का.आ. 1951.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केरला मिनेरल्स एण्ड मेटल्स लि. के प्रबन्धनत्व के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोल्लम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-97 को प्राप्त हुआ था।

[सं. एल-29012/38/96-आई.आर. (विविध)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1951.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kollam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kerala Minerals and Metals Ltd., and their workmen, which was received by the Central Government on 9-7-97.

[No. L-29012/38/96-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLLAM

(Dated, this the 30th day of June, 1997)

PRESENT :

Shri C. N. Sasidharan, Industrial Tribunal
IN

Industrial Dispute No. 15/96

BETWEEN

The Managing Director, Kerala Minerals and
Metals Ltd., Chavara P.O., Kollam Dist.

(M/s. Menon & Menon Advocates, Cochi)

AND

The General Secretary, Titanium Complex
Employees Union (UTUC) Chavara,
Kollam Distt.

(By Sri T. Ramakrishna Kurup, Advocate,
Kollam)

AWARD

This industrial dispute has been referred for adjudication to this Tribunal by the Government of India as per Order No. L-29012/38/96-IR(M) dated 14-10-1996.

The issue for adjudication is the following :

"Whether the action of the management of Kerala Minerals Ltd., Chavara, in imposing the punishment of demotion from the post of Security Guard to workman Gr. II w.e.f. 14-2-96 on Sri A. K. Ahmed Kunju is justified? If not, to what relief the workman is entitled?"

2. In answer to notice issued from this Tribunal both sides entered appearance and filed their respective statements. Thereafter the case stood posted for evidence of the union on four dates. But the union did not adduce any evidence. Today, when the case was taken up, the union and its counsel remained absent without any reason whatsoever. No adjournment was also sought on behalf of the union. The union was therefore set ex-parte. Since the union failed to come forward and prosecute the matter, it is not necessary to proceed further this case and no relief can be granted to the union.

3. In view of what is stated above an award is passed holding that the union is not entitled to any relief in this reference.

C. N. SASIDHARAN, Industrial Tribunal

नई दिल्ली, 9 जुलाई, 1997

का. आ. 1952:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एडमिनिस्ट्रेटर ऑफ़ ऑयल हैंडलिंग पूल एण्ड बोम्बे ट्रांसपोर्ट एण्ड डॉक वर्कर्स यूनियन

के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-I, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-97 को प्राप्त हुआ था।

[सं. एल.-31012/07/96-आई. आर. (बिबिध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1952.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1 Mumbai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Administrator of Oil Handling Pool and Bombay Transport and Dock Workers Union and their workmen, which was received by the Central Government on 9-7-97

[No. L-31012/07/96-IR(M)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, MUMBAI

PRESENT :

Shri Justice R. S. Verma, Presiding Officer

Reference No. CGIT-22 of 1996.

PARTIES :

Employers in relation to the management of Administrator of Oil Handling Pool and Bombay Transport and Dock Workers Union.

AND

Their Workmen

APPEARANCES :

For the Management.—Shri B. S. Sharma with Shri Rajesh Gehani, Advocate.

For the Workmen.—Shri P. K. Sharma with Shri K. P. Anil Kumar, Advocate.

For newly added Parties.—Shri Aditya Chitale, Advocate, Mumbai, dated the nineteenth day of June, 1997

AWARD

1. The appropriate government has referred the following dispute for adjudication to this Tribunal by order dated 28-8-96.

"Whether the action of the Administrator of Oil Handling Pool denying to absorb 10 employees, whose names are given below, is justified? If not, to what relief the workmen are entitled to?"

2. The ten workmen concerned in the dispute are related to each other. Bajrang Mahadeo Pethe is son of mother's sister of Mohan, Nagu and Abhiram, also mentioned as Abhimann, all using surname Bhowal. Ashok is son of said Abhiram or Abhimann. Ramu and Gyanu are brothers-in-law of Bajrang Pethe's brother. Shanu is Nagu's brother in law; Sagat is brother in law of Mohan; Pappu is brother in law of Gyanu (para 2 of statement of UW 2 Bajrang Mahadeo Pethe).

3. State Trading Corporation (S.T.C.) is an instrumentality of the State, being a statutory Corporation. It is inter alia engaged in importing of oils including edible oils from different countries. These oils are transported from the ships and other vessels to motor lorry tankers or storage tanks/pits in the Bombay Docks through pipelines/hoses fitted to the manifold of the ship. Initially, the S.T.C. used to engage its own labour for these operations.

However, over a course of period, the S.T.C. abdicated its functions in favour of Contractors/agents, who in turn would procure the labour/work force, either directly employing them or getting them through sub-agents or sub-contractors. Thus a pernicious system of exploiting the rampant poverty and unemployment came into being, in which hire and fire was the rule; there was no security of tenure; wages were far below the level of the wages of the employees in the Docks (or dockworkers as they are called). The availability of work and employment fluctuated with the arrival of ships/vessels bringing oil.

4. Transport and Dock Workers Union (TADWU), having realised the genuineness of the aforesaid problems of the aforesaid workers engaged for S.T.C. through its agents/contractors, took up the issue with the S.T.C. and its various contractors, six in number viz. M/s. Jivilca Agencies, M/s. Maharashtra Commercial Enterprise, M/s. Motumal and Co., M/s. Umershi M. Khore & Co., M/s. Universal Trade Service and M/s. Jessie Mistry Agencies. The matter eventually went into conciliation and on 19-7-84 a settlement was hammered into between the office bearers of TADWU representing the workmen on one hand and representatives of six contractors on the other. S.T.C., the ideal employer it was supposed to be, backed out and washed off its hands of these problems on the ground that the workmen concerned were employees of the various six contractors and had no master-servant relationship with the S.T.C. The Office bearers of the TADWU reconciled themselves to this position and a settlement was duly signed between the office bearers (K. B. Bajpai and R. A. Pandit) of TADWU on one hand and representatives of the aforesaid six contractors. The settlement was signed in presence of Shri K. P. Mehta, Assistant Labour Commissioner, Bombay and was to be effective w.e.f. 1-7-84. This settlement has been placed on record by the Union espousing the present cause as Ex. C.

5. By this settlement, a Scheme was devised, the twin objects of which were to be (i) proper and smooth handling of oil in Bombay pool; and (ii) Regulation of workers employment and welfare of the workers. The scheme formed a pool of the 'Oil handling Workers' with the caption 'The Bombay Port Oil handling workers Pool' Under this settlement, all the contractors and clearing and forwarding agents who were handling oil on behalf of S.T.C. were required to recognise the Pool and were requested to draw labour from this Pool only. Thus, a monopoly Pool of Oil handling workers to handle oil at the Bombay Port was created. This Pool was to be run jointly by the representatives of the aforesaid six employers and representatives of TADWU. The employer-members of the Pool were required to pay not only the wages of the labour employed by pool, but were also required to pay in addition a levy of 75 per cent of gross wages of the workers. The wages and levy were liable to be revised from time to time. This was linked with the revision of the pay scales of Port and Dock Workers. The workers were placed in a specified pay scale and were also made eligible for various perks and amenities like leave wages, provident fund, gratuity, holiday wages and weekly offs. The settlement was to be effective from 1st July, 1984.

6. In pursuance of the aforesaid settlement, a constitution of the Bombay Port Oil Handling Workers Pool was framed. The constitution inter alia incorporated the terms of the settlement. The Pool was to cover entire Bombay Port and its extended areas. It was to be managed jointly by all the employer-members and the TADWU. According to this constitution, an Administrator was to be appointed to run the Pool by joint nomination of employer members and TADWU. The Administrator so appointed was to be guided in management and day to day functioning of the Pool by a Committee consisting of at least one nominee of the employers and one nominee of TADWU. The collection of wages and levy from the employer members was the responsibility of the Administrator and the expenses of running of the Pool were to be met out of the levy to be collected by the Pool. The nominees of the employers and/or the Union could be replaced only by a resolution passed by at least 2/3 majority of employers and the Union. The honorarium to be paid to Administrator was to be decided and reviewed by the Committee from

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time to time. Any fresh member or labour could be enlisted to the Pool only by the General body in the meeting of the employers and the Union. The employer-members of the Pool were obliged to engage their labour only through the Pool and it was for the Pool to supply labour to individual employer members on the basis of their requirement.

7. The constitution defined worker to mean Oil handling workers in the Bombay Port.

8. It may be noted that the constitution was signed by representatives of the six employer members and by Sri. Bajpai and Pandit on behalf of TADWU.

9. It is significant to note that neither the settlement nor the constitution provided as to what shall be the basis for enlistment of initial workers to the Pool. It is also significant to note that initially 28 workers were admitted to the pool, names whereof find place in para 1 of affidavit of MW1 B. S. Sharma. I am not required to adjudicate of these 28 workmen were rightfully admitted to the pool or not; since such a dispute has not been referred to this tribunal. I have alluded to this aspect of the matter only with a view to complete the narrative.

10. It is also significant to note that out of 28 workmen admitted initially to Pool, many have retired or gone out of picture and at present only twelve persons named in para 1 of the aforesaid affidavit of Shri B. S. Sharma are members of the Pool.

11. It is also significant to note that at the time, the said settlement was signed, no list of workmen (to be enlisted) was prepared. No notice was issued to concern in union to file list of workmen eligible to be admitted to the Pool. Individual members-employers were also not asked to notify the workmen, individually or collectively, to apply for admission to the Pool (para 24 of cross examination of MW1 B. S. Sharma). Thus, it appears that the entire matter of admission of worker members to the Pool was shrouded in mystery and probably was a clandestine affair. However, no more of this since the admission of the members admitted initially is not under challenge before me and their admission to the Pool has become final.

12. It appears that a rival union of workers in the Docks named Bombay Transport and Dock Workers Union (BTADWU) came into being sometimes in 1990. BTADWU on the complaint of certain other workmen, not concerned in this dispute, did some investigative work into the formation and management of the Pool and eventually filed a writ petition No. 762 of 1991 before Hon'ble the High Court. In this writ petition, affidavit of one Mrs. Bajpayee, Secretary of TADWU was filed and from this affidavit, Mr. P. K. Sharma, President of the rival Union BTADWU came to know of the settlement aforesaid. This agreement dated 19-7-84 was also brought to the notice of said Mr. P. K. Sharma by S.T.C. in certain proceedings before the Regional Labour Commissioner, Bombay. Since certain workmen of the Pool were not being paid minimum guarantee wages by the Pool, BTADWU came to file another writ petition No. 921 of 1992 before the Bombay High Court. It appears that certain contempt proceedings bearing No. 561 of 1992 were taken wherein Mr. B. S. Sharma filed an affidavit dt. 2-12-92 alongwith certain documents and the exact position about the formation of Pool came to the notice of said Shri P. K. Sharma.

13. It appears that the ten workmen concerned in the present dispute became members of BTADWU sometime in 1995. All these ten workmen claimed to be Oil Handling Workmen through the two agents of S.T.C. namely M/s. Motumal & Co. and Umershi Khora and Co. and raised grievance of their non admission to the Pool and other grievances. In spite of the fact that they had been working with the aforesaid two employers right from the formation of the Pool, their grievance was that they were not admitted to the Pool. The case of BTADWU is that it took up the cause of these ten workmen with the Pool, but since it was not heeded to, and grievances were not redressed, the matter was taken up in conciliation by BTADWU. However, because of dilatory proceedings in conciliation one of the workmen viz. Mohan Pandurang Bhowal instituted writ petition No. 1437 of 1996 against

S.T.C. and others. This writ petition was disposed of by a learned single Judge of the High Court vide order dated 1st August, 1995, whereby the Central Government was directed to refer the dispute as noticed above for adjudication. Consequently, this dispute was referred as noticed above. Learned Single Judge also made certain interim directions to engage the petitioner and nine other persons for oil handling.

14. Initially, the BTADWU took the stand that the workmen concerned in this dispute had been working for the S.T.C. through their agents for more than twenty years. Then, it recited the fact of settlement between TADWU on one hand and the six employers on the other. It referred to the said settlement and the consequential formation of the Pool and framing of its constitution and pleaded that they were entitled to be admitted to the Pool from its very inception with consequential benefits. However, the Pool did not admit them as members and thus deprived them of their valuable rights as the members of the Pool. Upon such pleadings they prayed for the following reliefs:—

- “(a) That the workmen whose names are listed hereinabove, be treated as permanent workmen of the Pool and be granted wages as prescribed under the Agreement dated 19th July, 1984 and the Constitution aforesaid;
- (b) that the said workmen be granted pay scale as prescribed under the Agreement dated 19th July, 1984 with retrospective effect from 19th July, 1984;
- (c) that the said workmen be paid the differences between the eligible wages and actual wages paid to them for their work for last 11 years.

15. The Administrator of the Pool contested the claims of the workmen espoused by BTADWU and traversed its pleas and raised a number of objections. It may be stated that BTADWU did not implead the two Contractors through whom the concerned workmen are said to have been employed. However, on directions of this tribunal the two contractors viz. M/s. Motumal & Co. and M/s. Umershi M. Khore & Co. were joined as parties and they have also traversed to pleas of BTADWU and have opposed the claim by raising a number of objections.

16. On the pleadings of the parties, following points need adjudication by this tribunal:

- (1) Whether under terms of Ex-C and Ex-D the present workmen are entitled to be admitted to the Pool?
- (2) Whether the dispute raised is not an industrial dispute?
- (3) Whether this tribunal has no jurisdiction to direct the Pool to admit the workmen herein to the Pool?
- (4) Relief to which the parties are entitled?

17. Both the parties have led voluminous documentary and as also oral evidence in support of their respective cases. I have heard the learned counsel for the parties at great length.

18. Learned counsel for BTADWU has urged that on the basis of evidence adduced by the Union, it has been established that Pool was a virtual employer and the workmen in question were its employees though inducted through the two Contractors Motumal & Co. and Umershi Khore & Co., hence relationship of master and servant was created between the Pool and the workmen. The ‘Pool’ was an industry as contemplated within the meaning of the provisions of the Industrial Disputes Act. Since the workmen were ‘Oil Handling Workmen’ as defined in the constitution of the Pool they were entitled to be admitted to the Pool from its very inception. The dispute was an industrial dispute as envisaged by law. Hence, the tribunal was entitled to adjudicate upon the issues raised and ought to grant the relief claimed by BTADWU in forum of workmen.

19. The plea of all the contesting opposite parties is that Pool was exclusively for workers who were engaged for transfer of oil to motor lorry tankers and were designated ‘Open Ground Pipe Line’ (OGPL) workers. It was never intended to include the workmen engaged to work on Under Ground Pipe Line (UGPL), which work was of an interior type. The ten workmen concerned in this dispute belonged to this category of U.G.P.L. Moreover, they were not employees of Umershi Khore & Co. and Motumal and Co. at the time the Pool was formed and hence were not entitled to be admitted to the Pool. It was urged that Pool was not an industry. At any rate relationship of master and servant did not exist between the Pool on one hand and the ten concerned workmen on the other. It was also contended that since Motumal and Co. and Umershi Khore and Co. were not parties to the dispute as referred, no award could be made against them. It was vehemently urged that the claim, on the showing of the workmen themselves was extremely belated and deserved to be dismissed on this count alone. It was submitted that Administrator had no authority to admit members to the Pool. The Pool was an unregistered body. TADWU was a very important member of the Pool. Likewise, other four employers were the members of the Pool. Pool alone could admit members to itself. Since, the said four other employers and TADWU were not parties to the dispute, no effective adjudication could be made at their back and hence no award could be made.

20. Mr. P. K. Sharma and Anil Kumar for the BTADWU have countered by urging that the plea of delay and want of necessary parties were not taken in the pleadings and should not be permitted to be urged. It was submitted that the other contentions were also devoid of any force and all the relief claimed by BTADWU deserve to be allowed.

21. I have considered the rival contentions and have meticulously gone through the evidence and other material placed on record. I may state at the outset that workmen concerned in this dispute are almost uneducated people. Some of them are semi-literate; others are illiterate. Only one of them has received formal education of some sorts. All of them are hutment dwellers, which were under constant threat of demolition and were at times demolished too. For this reason, none of them has been able to preserve and maintain documentary evidence pertaining to their employment. Hence, they have placed on record, such sketchy and scanty evidence that they could salvage and lay their hands on. This aspect of their evidence has not been challenged in cross examination. Another facet of the evidence of the workmen concerned is to the effect that Motumal & Co. and Umershi Khore & Co. used to issue attendance cards to the workmen. These attendance cards used to be collected before the payment of wages by the two employers and were not returned thereafter. This aspect of the evidence has also not been challenged in cross-examination, sufficiently, so as to discredit the evidence or the workmen on this aspect. It is in this background that I shall have to consider the evidence of the parties.

22. Issue No. 1.—I have already referred to the essential features of the settlement dated 19th July, 1984 and constitution framed pursuant thereto. The basic idea in forming the Pool was to ensure on one hand proper and smooth handling of oil in Bombay Port and on the other regulation of worker's employment and welfare of the workers. The underlying idea was to create a monopoly pool of workers serving already with the six employers (Signatories to the settlement) and engaged in ‘Oil Handling’ at Bombay Port and its extended areas. The expression ‘Worker’ has been defined in sub-clause (d) of clause 28 of the constitution to mean ‘the Oil handling workers in Bombay Port’. This definition does not make any distinction between O.G.P.L. or U.G.P.L. workers. There is not a single clause in the settlement or in the Constitution of the Pool, which may suggest this dichotomy within the ‘Oil Handling Workers’.

23. It is settled law that where a document has to be construed the intention must be gathered in the first instance from the document itself. If the words are clear and unambiguous, effect must be given to them and any enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which are used. If however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended.

"A.I.R. 1954 S.C. 345 (Vol. 41, C.N. 83) *Chunchun Jha, Appellant V. Ebadat Ali and another, Respondents*."

.... Where a document has to be construed, the intention must be gathered, in the first place, from the document itself. If the words are express and clear, effect must be given to them and any extraneous enquiry into what was thought or intended is ruled out. The real question in such a case is not what the parties intended or meant but what is the legal effect of the words which they used. If however, there is ambiguity in the language employed, then it is permissible to look to the surrounding circumstances to determine what was intended."

However, in such cases where language used is ambiguous, the evidence as to subsequent conduct of the parties is inadmissible.

AIR 1960 Supreme Court 301 (V. 47 C. 53) *Bhaskar Waman Joshi (deceased and others), Appellants v. Shrinarayan Rambilas Agarwal (Deceased) and others, Respondents*.

The question in each case is one of determination of the real character of the transaction to be ascertained from the provisions of the deed viewed in the light of surrounding circumstances. If the words are plain and unambiguous they must in the light of the evidence of surrounding circumstances be given their true legal effect. If there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to existing facts. Oral evidence of intention is not admissible in interpreting the covenants of the deed but evidence to explain or even to contradict the recitals as distinguished from the terms of the documents may of course be given. Evidence of contemporaneous conduct is always admissible as a surrounding circumstance; but evidence as to subsequent conduct of the parties is inadmissible.

In the present case, the language of the settlement and the constitution is not at all ambiguous. As stated already, the expression 'Worker' has been defined with clarity and precision and means the Oil handling workers in the Port of Bombay. This definition does not even remotely suggest a dichotomy between two categories of workers, viz., OGPI workers and U.G.P.L. workers.

24. As contemporaneous conduct is cited the fact, that all the 28 workmen, who were initially admitted to the Pool were OGPI workers and none of them was U.G.P.L. worker. I have already pointed out that the admission of these 28 workers is not based upon rational basis. The settlement was signed by two Union representatives of TADWU. They could have thrown light on this aspect of the matter. BTADWU could not have examined them because of inherent union rivalries but there was nothing to prevent the Administrator and the two employers, parties to this adjudication from examining these witnesses. But they have not cared to do so and the only irresistible conclusion is that had these workers been examined to show contemporaneous circumstances, they would not have supported the Administrator of the Pool or the two employers, who are parties to this adjudication. Hence, I am of the view that the expression 'oil' handling workers in the settlement and the constitution of the Pool included all Oil Handling workers, whether engaged on OGPI or U.G.P.L. on the date the Pool was formed. Hence, in spite of the fact that these workmen were not OGPI oil handling workers, yet they were entitled to be admitted to the Pool, provided they establish that they were so employed on the date the settlement became effective.

25. At cost of repetition, I may state that the case of the Pool and the two employers before me though not spelled out with any precision and exactitude in the pleading, appears to be that initially only such workmen had been admitted to the Pool, who were engaged in O.G.P.L. work. But, I have already pointed out earlier, the clandestine manner in which the initial admission of employee members of the Pool was done. In the normal course, one would have expected the Pool to notify the settlement and constitution

of the Pool to all the workmen engaged in oil handling work on 1st July, 1984. When the settlement became effective and to scrutinise cases of all such employees on the basis of some well recognised and settled principles, to ascertain their eligibility for admission to the Pool. Principles of natural justice required that all the workmen engaged in oil handling work were acquainted with the criteria of eligibility of admission to Pool. It does not appear that anything of this sort was done at all prior to initial admission of employees to Pool. I have already stated that I am not concerned with the question of the workmen already admitted were rightly or wrongly admitted to Pool. My only concern is to acquire and find if the non-registration of the ten workmen concerned in the dispute in the Pool could be justified on any reasonable ground or hypothesis, provided they are able to satisfy the tribunal that on 1st July, 1984, they were engaged as oil handling workers with the two employers in question.

26. I may emphasise here that it were not all the oil handling workers which were to be admitted to the pool, and it were only workers of the employers, who were parties to the settlement, which were entitled to admission to the Pool. Workmen of S.T.C. itself did not fall in this category and hence they would not be entitled to such admission at all. I am here referring to the case of UW2 Mahadev Bairang Pethe, who in his affidavit in lieu of examination in chief, has tried to show that initially, he was directly engaged by the S.T.C. but later on was appointed by M/s. Motumal & Co. and M/s. Umershi Khora and Co. In this affidavit, he has not cared to state when was he appointed by Motumal and Co. or Umershi Khora & Co. His cross-examination, is however, revealing and exposes the myth that he had been employed by the two employers, prior to the formation of the Pool. He is comparatively an educated person, and has studied upto 7th standard. He claims to have joined the S.T.C. in 1973 and claims to have served under S.T.C. for 29 years, i.e., till 1992. He has admitted that the Officers of S.T.C. used to make payments of his wages. In further cross examination, he admitted that he started working for Umershi Khora some time 5-6 years back. This accords with his testimony that he worked with S.T.C. for 19 years. Thus, he was not an employee of Umershi Khora or Motumal and Co. on the date the Pool came into being.

27. UW3 Mohan Pandurang Bhowal, in his affidavit has come out with the story that he was also initially employed by the S.T.C. for doing oil handling work in the Port of Bombay. He goes on to say that some time in February/March, 1981, he started working for Motumal & Co. and Umershi Khora & Co. In this cross-examination, he reiterated that he along with Abhiram, Nagu, Pethe and Ramu joined S.T.C. He has admitted in cross-examination that he did not know for how many years, he remained in S.T.C. He modifies his stand that he joined Motumal and Co. in Feb./March 1981 and states that he joined the said firm in 1979. According to him, he worked for Umershi Khora & Co. for 16 years but states that his wages were paid by Motumal and Co. in further cross examination, he stated that he worked at U.G.P.L. at Dock Nos. 10 & 11. He denied the suggestion that he had not worked with Umershi Khora & Co. or Motumal and Co. Thus, his evidence, except for a minor discrepancy about the year in which he joined Umershi Khora & Co. remain unshaken. Whether it was 1979 or 1981 is not material because at any rate that was prior to the date of formation of Pool. Hence, I find that on formation of the Pool, this workman was entitled to be admitted to the Pool.

28. UW4 Abhiram (he is actually Abhiman) has come out with a similar case that initially, he joined S.T.C. in or about February/March 1981, he started working with M/s. Motumal & Co. and Umershi Khora and Co. and worked as oil handling workman. In cross-examination, he stated that he worked under S.T.C. only for two years and joined Umershi Khora in 1979. He states that for some days he would work with Umershi Khora and for some days with Motumal and Co., for such periods as work would be available. He has stated that he used to work at Dock Nos. 10 and 11 at U.G.P.L. He further elaborates that 'We worked at Tank Ferries also since 1980 to 1990. For this period we worked for Umershi Khora & Motumal and Co. He has denied this suggestion stoutly. Nothing has been elicited in his cross-examination which may go to discredit the basic substratum of his evidence,

as delineated above. Thus, it is proved that at the time of the formation of the Pool, he was an oil handling workman with Motumal & Co. and Umershi Khora & Co. diversely and was entitled to be admitted to the Pool.

29. UW5 Nagu Pandurang Bhowal has come out with a similar story as given by previous witnesses in their examination-in-chief viz. he initially joined S.T.C. as Oil Handling workman in Bombay Port. He then goes on to say that he started working with Motumal & Co. and Umershi Khora & Co. in Feb./March 1981. In cross examination, he has said goodbye to this story and has admitted.

"I worked only with S.T.C. I did not work with anybody else. Now, I am working with the Oil handling Pool after the High Court order. S.T.C. used to pay wages monthly but depending upon the number of days, I worked. Now, this evidence demolishes the earlier stand of the witness that he had, at any time, joined Motumal & Co. or Umershi Khora & Co. His being an employee of S.T.C. did not make him eligible to be admitted to the Pool, even though he was an oil handling workman working at Docks No. 10 and 11 at U.G.P.L."

30. UW6 Ashok Pandurang Bhowal in his affidavit in lieu of examination in chief has stated that he had been working as an oil handling workman in the Bombay Port since January, 1984 (Para 2 of affidavit). He goes on to modify this story and states in para 3 of the affidavit that on or about January, 1983 he started working with M/s. Motumal & Co. and Umershi Khora & Co. He further goes on to state that at the time of the formation of the Pool, he was already in employment of the said two employers. Much cross examination of this witness was centred around his age and joining of a particular school, but that is mostly besides the point. On the question of employment, he stated that he started working at the docks 12-13 years back. This cross examination was recorded on 25-2-97. Going by the admission, he started working at the docks sometime between 25-2-84 and 25-2-85. He was confronted with Ex. UW 6/1, a casual entry point duly signed by him. Initially, he denied that Ex. UW 6/1, bore his signature but later on admitted that it bore his signatures marked A to B. This document is dated 8th August, 1996 and mentions his age as 21 years. In cross examination, he states that when he joined the docks, his age was 18-19 years. This would put his total service at docks at about 2-3 years on 8th August 1996 and does not at all support his version that he entered the service of M/s. Umershi Khora and Motumal & Co. on or about January 1983. Thus, his statement that he had joined the said employment prior to formation of the pool is unreliable and unworthy of credence. He was, thus, not entitled to be admitted to the pool at all.

31. UW7 Gyanu Shoma Turad has also come out with the story in examination in chief (Affidavit) that he had been working at the Bombay Port as Oil Handling workman since 1977-78 (para 2). He then goes on to state that on or about February/March 1981, he started working with Motumal & Co. & M/s. Umershi Khora & Co. In his cross examination he stated.

"First of all I started working with S.T.C. itself. He has stated that the work with S.T.C. went doom sometime in 1977-78. After that he used to work for S.T.C. at times. Then he goes on to state 'Even now, I work with S.T.C. I worked for S.T.C. prior to High Court order.' He then states I do not recollect name of any official who used to supervise my work. Abhiman Pelhe etc. used to pay wages to us ten persons concerned in this dispute'. In further cross examination, he states 'we used to work with only two parties viz. Motumal & Co. and Umershi Khora. Both these companies are separate and their owners are separate. We worked sometimes with Motumal & Co. and sometime Umershi Khora and Co. depending upon the availability of the work. Motumal himself used to pay our wages. Who used to pay our wages in Umershi Khora, I do not recollect'."

He further states that Umershi Khora and Motumal & Co. removed him 2-3 years back and stopped him giving work".

32. B.S. Sharma (MW-1) has stated in his affidavit in lieu of examination in chief (para 11) that Motumal died on 17-5-67. When it is so, there could have been no occasion for Motumal to pay wages for this workman. As already stated, he does not even know as to who used to pay his wages in Umershi Khora & Co. Thus, his story that he had worked for Motumal & Co. or Umershi Khora & Co. does not inspire confidence and is not worthy of credence. May be he has been an oil handling worker under S.T.C. directly.

33. UW8 Pappu Kirde, UW9 Ramhari Shagat and UW10 M. D. Shane have almost similar and identical claims viz. that each one of them was initially engaged directly by S.T.C. but some time in January 1983 each one of them was engaged to work as oil handling workman with Motumal Umershi Khora.

34. On 25-2-97, all the parties jointly submitted that cross examination of these witnesses and answers of these witnesses were likely to be on the same lines on which the previous witnesses of the Union have deposed and hence while assessing the evidence of these witnesses, cross examination of the previous witnesses be read in context of these witnesses also and hence these witnesses may not be cross-examined individually. In view of this joint submission, the individual cross examination of these witnesses was dispensed with. Now, it may be recalled that UW2 Mahadeo had stated "In the beginning, we five persons viz. Mohan, Abhiman, Nagu and Ramu and myself came together to Bombay. All the five of us got job together with S.T.C. Rest of the five persons joined us at Bombay in 1984 which month remaining five persons joined us, I do not know". This testimony would falsify the claims of Pappu, Ramhari and M. D. Shane altogether, because having joined Bombay only in 1984, they could not have been engaged by Motumal & Co. & Umershi Khora in January 1983.

35. UW11 Ramu Turad has made the claim that he along with others joined S.T.C. directly. He started working at Oil handling in Bombay Port in 1978-79. He, however, claims to have joined Motumal & Co. and/or Umershi Khora and Co. in 1981 and he also asserts that at the time of formation of the Pool, he was very much in employment. In the totality of the circumstances, I may accept this claim as truthful.

36. Thus, on a conspectus of the entire circumstances, I find that UW2 Mohan Pandurang Bhowal, UW4 Abhiman Pandurang Bhowal and UW11 Ramu Turad have succeeded in showing that each one of them joined under Umershi Khora and/or Motumal & Co. as Oil handling worker, prior to the formation of the Pool, and thus each one of them was entitled to be admitted to the Pool, but was improperly and unjustifiably not admitted to the Pool. However, such a claim made on behalf of UW2 Mahadeo Bajarang Pethe, UW5 Nagu Pandurang Bhowal, UW6 Ashok Pandurang Bhowal, UW7 Gyana Syama Turad, UW8 Pappu Kirde, UW9 Ramhari Shagat and UW10 M. D. Shane have failed to substantiate their claims.

37. Here, I may take note of the contention that the Pool has not led any sufficient evidence in rebuttal and hence the evidence of the witnesses of the Union should be accepted. To my mind the contention is neither here nor there. The Union BTADWU has to stand on the strength of its own evidence. A suggestion was given to Shri B. S. Sharma that he was sub agent of Umershi Khora and Motumal & Co. for supplying labour to them and he utilised the services of the ten workmen concerned in the dispute for oil handling work. He has denied both the suggestions but has admitted that he used to take work from some of these workmen outside the docks. This admission does not advance the case of BTADWU at all.

38. MW2 Ekbal Hussain was examined to show that the Pool was formed in 1984 and he was an oil handling worker. Certain other facts have been elicited in his evidence which have no bearing on the question to be adjudicated by me. A suggestion was given to this witness that prior to formation of the Pool, the ten workmen concerned in

this dispute used to work with Mr. Sharma. Now, this was never the case of the workmen concerned and their entire case was that they were employees of Motumal & Co. and Umarshi Khora at the time of the formation of the Pool. This was never the case of workman then B. S. Sharma had anything to do with these two employers.

39. A contention was also raised that Motumal & Co. and Umarshi Khora and Co. though joined as parties to the tribunal, did not care to lead any evidence in the rebuttal and hence the case of the workmen that all of them were working for these two employers should be accepted. In my opinion when the workmen have failed to substantiate their case to the extent indicated already, failure to lead evidence by these two employers would be of no avail and they have yet to stand on their own legs. Hence, my finding on this issue is, as recorded in para 36.

40. Issue No. 2 : Shri R. R. Gehani has candidly conceded that the dispute raised is an industrial dispute. Shri Aditya Chitale has not differed from this stand either. Hence, I held that the dispute in question is an 'industrial dispute' and the appropriate government was competent to refer the same for adjudication to this tribunal. Issue is decided accordingly.

41. Issue No. 3 : Shri R. R. Gehani has vehemently contended that there was no relationship of master and servant between the Pool and the workmen concerned in this dispute and hence this tribunal had no jurisdiction to make any award in the matter. He also urged that power to admit members to the Pool did not vest in the administrator or in the two employers, joined by this tribunal to these proceedings. Hence, this tribunal had no jurisdiction to make any award against the Administrator or against the two employers. He, then contended that the Pool was an unregistered body and six employers and TADWU were members of the Pool. Administrators had no authority to represent the Pool and hence also no award could be made by this tribunal. Shri Aditya Chitale has also adopted these arguments. As against this, Mr. Anil Kumar has vehemently urged that this tribunal is competent to pass an appropriate award against the Administrator and the two employers, notwithstanding the fact that other members of the Pool are not parties to these proceedings.

42. I have considered the rival contentions. Shri Anil Kumar has placed strong reliance upon Bangalore Water Supply (1978) 1 LLJ 349 in support of the contention that the Pool was an 'industry' as the Pool fulfilled the triple test viz. (i) Systematic activity (ii) Co-operation between employer and employee and (iii) Production and/or distribution of goods and services to satisfy human wants. He read over to me passage after passage from this ruling to support his contention. However, one thing that strikes me most is that really the relationship of master and servant existed only between the two employers and the workmen concerned in the dispute. The Pool was not the employer of these workmen but was merely a device or scheme for regulating the service conditions of the workmen and smooth running of the oil handling work of the contractors and agents of the S.T.C. In this context, it may be profitable to recapitulate the salient features of the settlement and the constitution of the Pool. Clause (2) of the settlement specifically mentions the Pool as a scheme and states that the objects of the scheme would be (a) proper and smooth handling of oil in Bombay Port (b) Regulation of workers employment and (c) Welfare of the workers. The scheme enjoined upon the Agents/Contractors of S.T.C. to recognise the Pool and draw labour from the Pool. By the scheme, the Bills of wages etc. were to be cleared by the said contractors/agents and were also required to pay a levy of 75 per cent. The workers were to be paid leave wages, P.F., gratuity etc. out of this levy. Thus, the pay masters of the workers remained the agents/contractors of the S.T.C. and Pool was merely to collect the wages bills and levy with a view to distribute it to labour.

43. The constitution of the Pool makes these terms of settlement more explicit and clear. Under the terms of the constitution, the Administrator of the Pool is charged with the responsibility of running the Pool. He is required to collect wages and levy from the concerned employers. He

is also required to disburse wages and other benefits to employees and is also charged with deduction/payment of provident fund and taxes and to maintain account thereof. The Administrator is not entitled to admit any member to the Pool, which can be done only by the general body in the meeting of employers and the Union. The Pool is required to supply workers to the members. Thus, it would be seen that by virtue of operation of the Pool, the master and servant relationship between the original employers and employees has not been brought to an end, the employers are still entitled to take work from the employees; they continue to be responsible for payments of wages and levy for the benefit of the employees. The Pool is only a collection/disbursing and regulating agency on behalf of the individual employers. The scheme does not create a new relationship between itself and the employees but is only an agency or instrumentality of the employees and the TADWU is only a member of the Pool to protect the right of the workmen who still continue to be employees of the individual employers; this relationship between the individual employees and their respective employers is not snapped. The Pool is only a non-statutory scheme envisaged to perform the limited functions assigned to it.

44. Now, I may have a cursory look at the settled law enunciated by the apex court to cull out the indicia that determine master and servant relationship in industrial law. Those indicia, though not exhaustive, would none the less cumulatively determine the said relationship. They are (a) the right of recruitment and corresponding right of termination of service, (b) the right and obligation of disbursement of wages/emolument, (c) right of determining the other conditions of service including the right of transfer and deployment according to requirement, (d) right of initiating and proceedings of disciplinary action, and the last but not the least the right of continued supervision and control over the work.

45. Examined from these angles, there appears to be a delicately balanced dichotomy shared between the Pool and the individual employers. The right of the individual employers to recruit directly a new employee has been taken away. The deployment of workmen to individual employers is regulated by the Pool. The disbursement of wages and emoluments, though depends upon the payments made by original master, yet has passed over to the Pool. Rights to determine scales of wage is not in the hands of individual employers, but has been vested in the Pool. Overall disciplinary control over the employers as also employees violating the constitution of the pool has been vested in the Pool.

46. There is no direct authority of the apex court dealing with such a situation which is sui generis. However, there are authorities of different High Court and the apex court dealing with similar, but statutory schemes, governed by individual statutes and may not be very helpful in arriving at a correct answer to the problem posed before me. The first judgment relied upon by Shri R. R. Gehani is the Dock Labour Board V/s. Stevedores Association AIR 1970 S.C. 1626 wherein after examining the scheme of the Dock Labour Board the apex Court came to conclusion that on consideration of the relevant provisions of the concerned statute, the Dock Labour workers are employees of registered employers, to whom they are allotted by the Dock Labour Board and were not employees of the Dock Labour Board. Paras 23, 24, 25 of the said report elaborately state that position. This judgment was considered in 1995 1 CLR 648 Management of Dock Labour Board Visakhapatnam and it was opined that the aforesaid judgment of the apex court was no longer good law, for the reason that the judgments upon which the dicta in that case were based, had been overruled in Bangalore Water Supply case (1978) 1 LLJ 349. In 1995 1 CLR 1024, Dattatray Gopal Paranjape, the question was if a trade union was an industry qua its employees. It was held that even a Trade Union would be an industry qua its employees. The same view was taken in 1993 11 CLR 1059 Rashtriya Mill Mazdoor Santh by another learned single judge of the same High Court. These two judgments do not pose the question regarding nature of diachronic relations between individual employers and their union qua individual workman and hence are not very helpful in the matter.

47. A matter of this type, but dealing with a statutory scheme framed in respect of Security Guards came up before a learned single Judge of Bombay High Court in *Travesel Security Services Pvt. Ltd.* Vol. 84 (1982) BLR 608 after surveying the provisions of the concerned Act held that the Registered employer will be the employer for purposes not provided for under the Act. Thus the judgment recognised the diarchy. I have spoken of. Then came a judgment of the Division Bench of the Bombay High Court in *Suraksa Rakshak and General Kamgar Union vs. MSSJDC & Ors.* (W.P. No. 2671 of 1992) decided on 23-3-93 expressed the opinion that direct employment and coverage under the concerned Act were anathema to each other.

48. These judgments were considered by the same High Court in 1996 II CLR 76 *Krantikari Suraksha Rakshak*, which also recognised the scheme of diarchy spelled under the Act, yet held that for purposes of unfair Labour practice complaints, registered employers were to be considered employers.

49. From the aforesaid judgments, it can be said with reasonable certitude that the workmen concerned in this dispute, were both the workmen of the individual employers for certain purposes but also registrable as employees of the Pool for the purposes of the provisions of the scheme spelled out in the constitution of the Pool. As such, this tribunal had jurisdiction to adjudicate this dispute as referred to it by the appropriate government, the issue is decided accordingly.

50. Issue No. 4 : Relief : However, the real difficulty arise here for the simple reason that the Pool as such is not a party before me. It is only the Administrator of the Pool, which was joined as a party to the dispute. Of course, this tribunal issued notices to the two concerned employers also. The question is, What is the 'Pool' To my mind, it is a compendious name for all its employer-members and the TADWU. Admittedly, the Pool is not a registered body. The constitution of the Pool does not empower the Administrator to sue or to be sued on behalf of the Pool. During the course of arguments, I repeatedly brought this point to the notice of learned counsel for the Union espousing the cause of the present workmen. I pointed out to him that administrator of the pool was not synonymous with the Pool and any adjudication made against the Administrator, would not be binding on the Pool and the Pool could nullify the adjudication, by not abiding with the same. Shri Anil Kumar vehemently contended that since no objection to non-joinder of necessary parties had been taken, the question of nonjoinder of necessary parties and its effect on this adjudication can not be considered at all. Shri Anil Kumar contended that an adjudication should be made against the Administrator of the Pool and against the two employers, who were added as parties by this tribunal. In my opinion this course is not open to me because I cannot anticipate or imagine as to what shall be the objections of other constituents of the Pool to the adjudication, that may be made in this dispute. To my mind, this objection overlooks a very important and vital aspect of the matter viz. the difference between proper parties and necessary parties. Necessary parties are those in absence of which a decision cannot be rendered, on the basic ground that they would not be bound by an award rendered at their back. It involves the basic principle of 'audi alterum partem', which is ingrained in our jurisprudence as a postulate, violation of which would render a decision ineffective against persons who are not parties to the lis. Having all my sympathies with the workmen, whom I have found eligible to be admitted to the Pool, I find that I cannot make any effective adjudication against the Pool viz. direct the admission of the said workers to the Pool. Admittedly, the Pool is not a juristic personality, not having been incorporated under any law. At cost of repetition, it is only a convenient and compendious mode of describing all the constituents of the Pool viz. all six employer members and the TADWU. Right to admit members to the

Pool did not and does not rest with the Administrator of the Pool but with the Pool. At least four employer members and TADWU are not before me. In (1964) 1 LLJ 134, a canteen committee had been impleaded without impleading the individual members. It was held that without impleading the members, the committee could not be impleaded. In AIR 1959 Punjab 220 *Punjab State Club, Simla*, a similar view was taken and it was observed that the club had no legal status. It is neither a company nor a partnership. Such association of members cannot sue or be sued in the Association's name and all its members must sue or be sued. A similar view was taken in AIR 1961 Calcutta 393 *Naton Bihari Day*. This view finds support from a dicta in AIR 1957 Allahabad 219—Board of Directors YMCA. To my mind a different approach cannot be countenanced, in industrial adjudication as well. So, the necessary parties must be before the tribunal before any award to their detriment or prejudice can be passed. As stated already, the constitution of the Pool does not authorise the Administrator to sue or to be sued in its name. Hence, no effective adjudication can be made against the Pool without impleading all its constituents, which are not merely proper parties but are necessary parties, for any effective adjudication.

51. In the aforesaid premises, the claim of BTADWU is not sustainable and is rejected. In the circumstances of the case, parties shall bear their own costs. Award is made accordingly and be notified to all concerned as per law.

R. S. VERMA, Presiding Officer

नई दिल्ली, 9 जुलाई, 1997

का. आ. 1953 :—श्रीद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बोम्बे पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निदिष्ट श्रीद्योगिक विवाद में केन्द्रीय सरकार श्रीद्योगिक अधिकरण, सं.-1, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-7-97 को प्राप्त हुआ था।

[सं. एल.-31012/17/96-आई. आर. (विधि)]
वी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1953.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mumbai Port Trust and their workmen, which was received by the

1.6-7-96 को प्राप्त हुआ
[No. L-31012/17/96-IR (Misc)]

B. M. DAVID, Desk Officer

ANNEXURE

New Delhi, the 11th July, 1997

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI
PRESENT :

Shri Justice R. S. Verma, Presiding Officer
Reference No. CGIT-1/5 of 1997

PARTIES :

Employers in relation to the management of
Mumbai Port Trust

AND

Their Workmen

APPEARANCES :

For the Management—Shri M. B. Anchan,
Advocate

For the Workman—No appearance

STATE : Maharashtra

Mumbai, dated the 12th day of June, 1997

AWARD

Shri M. B. Anchan for management. The workman has not filed his written statement of claim. Notices sent to him at the address mentioned in the order of reference have been received back unclaimed. Mr. Anchan states on instructions from officer of M.P.T. present that management also does not have any address of the workman. In these circumstances, the matter is adjourned sine-die and for statistical purposes, may be shown to have been disposed. However, if the workman, at some point of time, files a claim, the matter may be restored to original number after notice management. Disposed of as indicated.

R. S. VERMA, Presiding Officer

नई दिल्ली, ११ जुलाई, १९९७

का. आ. १९५४.—औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) की धारा १७ के अनुसरण में, केन्द्रीय सरकार एटोमिक मिनरल डिविजन के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-१-धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को ११-७-९७ को प्राप्त हुआ था।

[सं. एन.-२९०१२/२६/८७-डी-III (बी)]
बी. एम. डेविड, डेस्क अधिकारी

S.O. 1954.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. I, Dhanbad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Atomic Mineral Division and their workman, which was received by the Central Government on 11-7-97.

[No. L-29012/26/87-D.III (B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section
10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 106 of 1991

PARTIES :

Employers in relation to the Management of
Atomic Mineral Division, Deptt. of
Atomic Energy, A.M.D. Complex,
Begampet, Hyderabad.

AND

Their Workmen

PRESENT :

Shri Tarkeshwar Prasad, Presiding Officer

APPEARANCES :

For the Employers—Shri S. Paul, Advocate

For the Workmen—None.

STATE : Bihar INDUSTRY : Atomic Energy
Dated, the 1st July, 1997

AWARD

By Order No. L-29012/26/87-B.III(B), dated 28-10-1991 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the Management of Atomic Mineral Division, Deptt. of Atomic Energy, A.M.D. Complex, Begampet, Hyderabad in terminating the service of Shri B. S. Goswami was justified? If not, what relief is the workman entitled to?”

2. The order of reference was received in this Tribunal on 6-11-91. After notice the parties appeared and filed their respective written statements and rejoinder and documents were also filed and thereafter case was fixed for hearing. But since 30-12-1996 none is appearing on behalf of the workman to take any step. Even on to-day (1-7-97) none is present on behalf of the workman. It, therefore, appears that the concerned workman is not interested in prosecuting the present case.

3. In such circumstances, I render a 'No dispute' award in the present reference case.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 11 जुलाई, 1997

का. आ. 1955 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास डॉक लेबर बोर्ड के प्रबन्धन के संबंध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 11-7-97 को प्राप्त हुआ था।

[सं. एन. 33011/1/90-आई. आर. (विविध)]

जी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 11th, July, 1997

S.O. 1955.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Madras Dock Labour Board and their workman, which was received by the Central Government on 11-7-1997.

[No. L-33011/1/90-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU
MADRAS

Monday, the 10th day of March, 1997

PRESENT :

Thiru S. Thangaraj, B.Sc., L.L.B., Industrial Tribunal.

Industrial Dispute No. 60 of 1990

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workman and the Management of Madras Dock Labour Board, Madras)

BETWEEN

The workmen represented by :

The General Secretary,
The Madras Harbour Workers' Union,
'Bhagat House', 204, Prakasam Salai,
Madras-108.

AND

The Dy. Chairman,
Madras Dock Labour Board,
Rajaji Salai,
Madras-600001.

REFERENCE :

Order No. L-33011/1/90-IR (Misc.), Ministry of Labour,
dated -7-90, Government of India, New Delhi.

This dispute coming on for final hearing on Tuesday, the 28th day of January 1997 upon perusing the claim counter and all other material papers on record, and upon hearing the arguments of Thiru M. Varadarajulu, Authorised Representative appearing for the petitioner and of Tvl. Aiyar and Dolia, and R. Arumugam, Advocates appearing for the Management and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

The Government of India, Ministry of Labour, Department in their Order No. L-33011/1/90-IR (Misc.), dated -7-90 have referred this dispute u/s. 10(1)(d) of the I. D. Act to this Tribunal to adjudicate the following issue :

"Whether the action of the management of Madras Dock Labour Board in refusing to revise the dates of birth in respect of S/Shri E. Arul Raj and G. Narayanan, Mazdoors as 14-12-49 and 6-7-46 respectively is justified. If not to what relief the workmen are entitled."

On service of notice the petitioner and the respondent appeared before this Tribunal and filed their claim statement and counter statement respectively.

3. The main averments found in the claim statement filed by the petitioner union are as follows :

The petitioner union is a registered trade union representing the workers of Madras Dock Labour Board. The workman Shri K. Arulraj now working as listed Mazdoor (token No. 653) in the respondent Madras Dock Labour Board was taken as a casual labourer and at the time of taking him as casual labourer the management has collected the details regarding his name and father's name only. When he was appointed as permanent mazdoor the management required the date of birth of the workman and since there was no document to substantiate his date of birth the management in a hurried manner sent him to the medical officer, Madras Port Trust who fixed his age approximately as 28 years as on 5-8-70. However, the workman K. Arulraj was born on 14-12-1949 and in support of his age he has got the certificate issued by the authorities in the Register of Baptism, Mudalur circle, Tirunelveli District, Rev. M. P. Jesudasan has also given a statement regarding the authenticity of the certificate. The management refused to accept the certificate on the ground that it contains a different name. However, Rev. M. P. Jesudasan of Mudalur circle and the Tahsildar have given a certificate regarding the name of the workman. The said certificate issued by the Baptism Church which is concerned with the workman and the management is not justified in refusing to accept the certificate.

4. The workman Thiru G. Narayanan is now working as Winch Driver (T. No. 1067) in the Madras Port Trust. At the time when he was recruited as casual labourer his name and father's name alone were ascertained by the management and at the time of confirmation they wanted the date of birth of the workman. Since the time granted by the management was too short to obtain a certificate from the village of the workman the management has fixed the approximate age of the workman at 28 years as on 5-8-70 through their medical officer. However when the workman has produced certificate showing his date of birth on 6-7-46 the same was not accepted by the management. Therefore, award may be passed to the effect that the date of birth of workman Shri K. Arulraj was 14-12-49 and the date of birth of the workman Shri G. Narayanan as 6-7-1946.

5. The main averments found in the counter filed by the respondent management are as follows :

On 16-8-1970 the workman Shri K. Arulraj was listed as a shore worker under the Madras unregistered Dock Worker's (regulation of employment) Scheme 1957. At the time of his enrolment he was asked to produce a certificate regarding his date of birth and he did not produce any documentary evidence. So, he was sent to the Board's Medical Officer who assessed and fixed the age at 28 years as on 5-8-1970. Subsequently also he has not produced any documentary proof regarding the proof of his real age. Shri Arulraj produced Baptism certificate on 22-11-72 and the name found in the Baptism certificate was Arul Prakasam Rajadurai as against the name of Arulraj. The management was unable to accept the certificate as the correct date of birth of the workman Arulraj.

6. The workman Shri G. Narayanan (R. P. Mazdoor No. 2425) did not produce any certificate regarding the date of birth. Therefore his age was assessed by the Board Medical Officer in the year 1970 as 28 years. The same was communicated to him on 14-11-1972. Shri Narayanan produced a birth certificate on 27-11-1972 issued by the Sub-Registrar, Mayilam without any indication of his name in the certificate. Therefore, the said certificate was not accepted. The respondent has given ample opportunity to both the workmen to produce the date of birth certificate and even then they have not produced any such certificate in time and the certificate produced by them were also not accepted for valid reasons. The other allegation regarding the fixation of date of birth of these two workmen are devoid of merits. There is no valid reason to accept the certificate produced by them to rectify their date of birth.

7. Two witnesses were examined on the side of the petitioner union and Exs. W-1 to W-3 have been marked. One witness was examined on the side of the management and Exs. M-1 to M-21 have been marked.

8. The Point for our consideration is :

"Whether the action of the management of Madras Dock Labour Board in refusing to revise the dates of birth in respect of S/Shri K. Arulraj and G. Narayanan, Mazdoors as 14-12-49 and 6-7-46 respectively is justified. If not, to what relief the workmen are entitled."

9. The Point.—The Madras Harbour Workers Union through its General Secretary has raised this dispute regarding the dates of birth of two workmen by name K. Arulraj working as listed Mazdoor (T. No. 653) and G. Narayanan working as Winch Driver (T. No. 1067). These two workmen at the time of entering into service did not produce any document to vouch the fact of their dates of birth. The management having no other go sent them to the Board's Medical Officer who fixed the age of each one of the workmen at 28 years as on 5-8-1970. Ex. M-1 is the application given by workman Narayanan. In the said exhibit the date of birth fixed by the Medical Officer as on 5-8-1970 also finds a place. This was entered into the register of the workmen on 18-1-71. The service sheet of the worker Shri Narayanan is marked as Ex. M-3. After fixing the age on 14-11-1972 the management had sent a notice marked as Ex. M-4 to Shri Narayanan to produce a certificate relating to date of birth within a month. It was mentioned in Ex. M-4 that he was permitted to produce (1) birth certificate with correct name (2) school certificate and (3) Baptism certificate. It is clear that Shri Narayanan has not produced those certificates immediately thereafter. The application for being listed as a Dock Worker in the case of Arulraj is marked as Ex. M-6 and on 18-1-1971 his age was fixed at 28 years as on 5-8-1970 by the Board's Medical Officer. Curiously enough in the application of Arulraj the other worker by name G. Narayanan has signed as a witness. As in the case of Narayanan the management issued Ex. M-7 notice to Arulraj asking him to produce age certificate with name, school certificate or Baptism certificate within a month. Though on 14-11-1972 the said notice was issued to both the workmen, they kept quite for long number of years. It is only in the year 1989 and 1990 more than 17 or 18 years later the workmen moved further regarding the change of their dates of birth. The contention on the side of the workmen

that the time granted by the respondent management was too short a period to produce a certificate regarding their dates of birth cannot be accepted for the simple reason that neither of them had produced any certificate even after one month within a period of one or two years. As already stated they felt the necessity of producing the certificate regarding their dates of birth after 18 years, when they came to know that their date of retirement was fast approaching. Such laches on the part of workmen may not allow them to get any relief which they prayed for in this case.

10. The Supreme Court in Central Bank of India Vs. S. Satyam (1996 II LLJ 820) held :

"The retrenched employees were employed between 1974-76. They filed Writ Petitions in 1982 claiming relief u/s. 25-H of I. D. Act. The laches leading to long delay after which the writ petition was filed in 1982 is sufficient to disentitle the workmen to the grant of relief in writ petition. Long lapse of long period of several years prior to filing of writ petition is sufficient to decline any relief to workmen."

In the instant case the delay is nearly 19 long years. So the lapse of long number of years will be sufficient reason to decline the relief to them. From the above decision of our Supreme Court it is clear that failure on the part of any party to agitate the matter at an appropriate time will go against their case. Accordingly the failure on the part of these two workmen till they agitated through the petitioner union by way of an industrial dispute in the year 1990 will go to show that their case suffers, for severe laches on the part.

11. The workman Shri Arulraj produced a certificate regarding his baptism which is marked as Ex. M-8 and W-2. His name even at the time when he entered into service was given as K. Arulraj. But the certificate marked as Ex. W-1 (M-8) shows that the baptism held on 19-11-1950 was for a child by name "Arul Prakasam Rajadurai". By seeing the name, no one can say that Arulprakasam Rajadurai is the workman Arulraj. This certificate was issued by one Rev. M. P. Jesudasan, as the true extract of the register of baptism kept at Mudalur circle. In his capacity as Chairman Rev. M. P. Jesudasan has also given a certificate that the name of Arulprakasa Rajadurai is the baptism name and pet name is Arulraj. This certificate dated 25-11-1972 also forms part of Ex. W-1, to vouch the fact that one Aruptha Mani wife of Koil Pillai had given birth to a male child on 14-11-49. He has also produced a certificate from the department of registration. However what is expected from the petitioner is a proof which will satisfy the consciousness of the Court or the Tribunal as the case may be regarding the correctness of the certificate. The parents of Arulraj or Rev. Father Jesudas who issued the certificate or the brother or sister of Arulraj or the neighbours who knew the date of birth should have been examined as witness before this Tribunal and only through their evidence this Tribunal can come to a conclusion. Though the Tribunal cannot wait for a sophisticated evidence under the Indian Evidence Act, it should have some evidence in proof of the fact. Ex. M-18 also has not been proved as the certificates pertaining to the workmen. Merely by producing the certificate one cannot except that the contents of the certificate have been proved. May be the workman Arulraj had younger brother. One can argue that Rev. Father could not give a false certificate to vouch the fact that Arulprakasam Rajadurai is Arulraj cannot be taken as a valid reason. Basically the Tribunal needs some proof regarding the certificates. When such proof is totally lacking the certificate cannot be accepted.

12. Shri Narayanan, the workman has given Ex. M-20 as his date of birth certificate. This certificate relates to the birth of a male child to one Loganayaki w/o Govindasamy on 6-7-46. On the basis of the said certificate the letter given by workman G. Narayanan is marked as Ex. M-21. The said certificate was not accepted by the respondent dock labour board for the reason that the name of the child was not there. Even in Ex. M-4 the management has clearly stated that if it is a birth certificate the name of the child must be there. So, the management had every valid reason not to accept the said certificate without the name of the workman. Subsequently Shri Narayanan had obtained a certificate on 19-11-1990 stating his name and the names of his parents. The said certificate shows that the date of

birth of Narayanan was on 6-7-1946. By that time the workman had raised the industrial dispute and therefore the authorities concerned in the management of the respondent have sent a letter stating, as an industrial dispute has already been raised the authorities are unable to decide his date of birth. Ex. M-20 is not the original. The date of issue of that certificate is not clear in Ex. M-20 which is a xerox copy. However it is clear from the said certificate that the birth of the child was registered within 3 days i.e. on 9-7-46. It is clear from Ex. W-13 that the said certificate was obtained on the direction of the Tahsildar Vanur dated 16-8-1990. The Sub-Registrar of Melam has issued a certificate on 19-11-90 basing on the certificate of the Tahsildar Vanur. Accordingly the name has been registered only on 16-8-90 and not earlier. Though the workman Narayanan has produced the proof Ex. W-13 he has not examined any witness to prove the real date of birth. Some person who knows the birth of workman ought to have been examined. Merely marking the certificate will not be taken as proof. Though the date of birth certificate called for in the year 1971 he has produced the certificate in the year 1990 after lapse of 19 years. To vouch the authenticity of the certificate he ought to have examined some person who knows his date of birth. The Tribunal should take all precautions before declaring the date of birth of any person even if the person is a worker. Therefore Ex. W-13 certificate cannot be said to be proved as contemplated under law, and so the said certificate cannot be accepted as the authenticated certificate for the date of the workman Narayanan.

13 The petitioner union has drawn my attention to a decision of the Bombay High Court in Bank of Baroda Vs. Tiruvani Prasad Umraasad Mjerna (1988 II T.T. 163) wherein it was held that the fixation of date of birth in the case of a worker can be done by the Labour Court and not by the Civil Court. From the decision we can accept that the Labour Court or Industrial Tribunal has got jurisdiction to decide the age of a workman. However from the foregoing discussion it is clear that though both the workmen tried to substantiate their real date of birth by producing documents, mere production of document cannot be taken as a authenticated proof of the certificate. They ought to have examined some witness on their side. Both the workmen examined themselves and they cannot speak regarding the fact of their own birth. In the absence of any evidence to vouch the correctness of those documents produced by them the said documents cannot be accepted. Therefore it has to be held that the petitioner union has failed to substantiate the age of these two workmen by name K. Arulraj and G. Narayanan and that they are not entitled to any relief.

In the result award passed dismissing the industrial dispute. No costs.

Dated, this the 10th day of March, 1997.

S. THANGARAJ, Industrial Tribunal

WITNESSES EXAMINED

For Workmen :

WW-1—Thiru K. Arulraj.

WW-2—Thiru G. Narayanan.

For Management :

MW-1—Thiru S. Shamugam.

DOCUMENTS MARKED

For Workman :

Ex. W-1/25-11-72—Birth Certificate of Arulraj from Church of South India, Mudalur circle (copy).

Ex. W-2/7-10-87—Certificate given by Collector of Sathankulam (copy).

Ex. W-3/21-3-89—Letter from General Secretary to the Asst. Commissioner of Labour (II) (Central).

Ex. W-4/31-3-89—Letter from petitioner to respondent requesting to reconsider their cases (Xerox copy).

Ex. W-5/19-12-89—Conciliation failure report (Xerox copy).

Ex. W-6/23-11-87—Requisition letter from K. Arulraj.

Ex. W-7/22-12-88—Letter from Admn. Officer to K. Arulraj, Mazdoor (Xerox copy).

Ex. W-8/11-5-90—Letter from Admn. Officer to K. Arulraj, Mazdoor (Xerox copy).

Ex. W-9/13-7-89—Letter from respondent regarding superannuation age (Xerox copy).

Ex. W-10/5-5-85—Letter from petitioner to respondent requesting to change date of birth of workmen (Xerox copy).

Ex. W-11/21-3-89—Letter from G. Narayanan to respondent regarding submission of certificate for age (copy).

Ex. W-12/13-6-89—Letter from A. Srinivasan to the Assistant Labour Commissioner (Xerox copy).

Ex. W-13/ —Birth Certificate of Narayanan.

For Management :

Ex. M-1/18-1-71—Application submitted by Narayanan to the post of listed Mazdoor (Xerox copy).

Ex. M-2/5-8-70—Medical certificate of fitness (Xerox copy).

Ex. M-3/5-10-70—Service sheet of G. Narayanan (Xerox copy).

Ex. M-4/14-11-72—Notice issued to G. Narayanan (Xerox copy).

Ex. M-5/11-4-89—Letter from Admn. Officer to the petitioners (Xerox copy).

Ex. M-6/18-1-71—Arulraj's application submitted to respondent in the prescribed form for the post of listed worker (Xerox copy).

Ex. M-7/14-11-72—Notice issued to the petitioner (Xerox copy).

Ex. M-8/22-11-72—Copy of Baptism certificate of K. Arulraj (Xerox copy).

Ex. M-9/5-3-90—Medical certificate (Xerox copy).

Ex. M-10/21-4-87—Letter from respondent to petitioner (Xerox copy).

Ex. M-11/30-4-87—Date of Birth certificate of Arulraj (Xerox copy).

Ex. M-12/11-5-90—Letter from respondent to petitioner (Xerox copy).

Ex. M-13/5-10-70—Service sheet of listed worker Arulraj (Xerox copy).

Ex. M-14/22-11-72—Register of Baptism of infant (Xerox copy).

Ex. M-15/11-12-72—Letter from petitioner to the respondent (Xerox copy).

Ex. M-16/25-11-72—Certificate given by Circle Chairman, EIS, Tirumalveli Diocese (Xerox copy).

Ex. M-17/6-4-87—Letter from petitioner to respondent (Xerox copy).

Ex. M-18/7-10-87—Tahsildar's certificate (Xerox copy).

Ex. M-19/19-10-89—Letter from petitioner to the Admn. Officer (Xerox copy).

Ex. M-20/23-11-72—Extract from the Register of birth in local area (Xerox copy).

Ex. M-21/27-11-92—Letter from petitioner to respondent (Xerox copy).

नई दिल्ली, 11 जुलाई, 1997

का. भा. 1956 -- मांगीत विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापटनम पोर्ट ट्रस्ट के प्रबन्धन के संबद्ध नियोक्ताओं और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापटनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-7-97 को प्राप्त हुआ था।

[म. एल.-34012/6/94-आई. आर. (विविध)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 11th July, 1997

S.O. 1956.--In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Visakhapatnam Port Trust and their workman, which was received by the Central Government on the 11-7-97.

[No. L-34012/6/91-IR (Misc.)]

B. M. DAVID, Desk Officer.

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM LABOUR COURT VISAKHAPATNAM

PRESENT : SMT. G. JAISHREE, B.Sc., LL.M.,
CHAIRMAN AND PRESIDING OFFICER

FRIDAY, THE 16TH DAY OF MAY, 1997

I.T.I.D.(C) No. 11/95

BETWEEN

P. V. Narasimhan,

Through : The General Secretary,
Port and Dock Employees Association,
14-25-32A, Dondu Bazar,
Maharanipeta,
Visakhapatnam.

.. Workman.

AND

The Chairman,
Visakhapatnam Port Trust,
Visakhapatnam.

.. Management.

This dispute coming on for final hearing before me in the presence of the petitioner in person and the management in person, upon hearing the arguments of both sides and on perusing the material on record, the court passed the following :

AWARD

(1) In this case, reference is made for adjudication, by the Government of India under Section 10(1)(d) of I. D. Act in the following terms :

"Whether the action of the management of Visakhapatnam Port Trust in reverting

Shri P. V. Narasimhan from the post of Driver, MV Gr-I to Driver MV with cumulative effect is justified? If not, to what relief the concerned workman is entitled to?"

(2) It is stated in the clam statement filed by the workman that he has been working with the management as Driver MV-Grade-I in the MV Section of Mechanical Department and he is active office bearer of the petitioner union and the management wanted to victimise the workman for his union activities and accordingly issued a charge sheet for major penalty under Reg. 10 of Visakhapatnam Port Employees (CCA) Regulations, 1968 alleging that he, along with another employee by name Ch. Appala Raju took out the Port vehicle unauthorisedly and went to town at about 7.00 pm on 4-5-92, for consuming liquor and after having drunk, while returning back to MV Section, they hatched a plan to steal the iron block material of size 24 X 2-1/2 feet which was lying in the premises near tinker shed of MV Section, with an intention of taking it away by carrying in the same vehicle and sell it away for pecuniary gain and the attempted theft could be prevented due to hearing un-usual sounds while lifting the material, by the other staff present and their intervention. The workman submitted his explanation denying the charge. But without considering the same, enquiry was conducted during the course of which the management examined 5 witnesses but no single witness spoke about the alleged offence and the involvement of the workman therein. But the enquiry officer held the charge proved. The workman pleads that the findings of the enquiry officer as well as the disciplinary authority are perverse and run counter to the evidence on record. The documents are not considered in the proper perspective. It is stated that on the basis of the alleged misconduct, show cause notice was given for reduction to the post of Driver (MV) from the post of Driver (MV) Gr-I and he was imposed the said punishment without considering his explanation to the same. The appeal filed by the workman to the Chairman was also rejected confirming the punishment. Thus, the workman pleads that the punishment imposed on him is illegal and the same may be set aside.

(3) Counter is filed by the management, opposing the petition. It is pleaded that no documentary evidence is filed to show that the petitioner union is registered and the workman is a member of the said union. It is denied that the petitioner was charge sheeted to victimise him because of his union activities as alleged by the workman. It is stated that the petitioner unauthorisedly took out the Port Vehicle out of the port premises in collusion with Ch. Appala Raju, for the purpose of consuming liquor on 4-5-92 at about 7.00 pm and after having drunk, he returned to motor vehicle section and made an attempt of theft of iron block material from the tinker shed of MV Section around at 8.00 pm on that day. The workman was issued charge sheet and his explanation was not satisfactory. It is pleaded that the management examined 5 witnesses during the course of domestic enquiry but the witness 1 to 4, being his co-workers were influenced by the workman to speak on his behalf. The enquiry officer carefully dealt with the

matter and exercised his discretion in coming to the conclusion that the charges against the petitioner are proved. It is pleaded that the documents and the material produced by the management proved the charges. It is denied that the findings are against the evidence on record. It is pleaded that the petitioner was removed from service after issuing show cause notice and considering his explanation carefully and the punishment imposed is proper. It is further stated that the appeal also was rejected after considering the same carefully by the appellate authority. It is further pleaded that the past record of the petitioner is not good and the same is tainted with various misconducts on committed by him. Thus it is pleaded that the punishment is not illegal and there are no grounds to nullify the same. Thus, it is prayed that the claim of the workmen may be dismissed.

(4) Memo is filed for the petitioner on 17-7-96 stating that the petitioner is not disputing the validity of domestic enquiry. Accordingly, heard arguments of both sides under section 11-A of I. D. Act. At the time of hearing u/s. 11-A of I. D. Act, no documents are filed by either side but the management earlier filed the record relating to the disciplinary proceedings. Both sides filed written argument. Perused the written arguments filed by both sides and the entire material on record.

(5) The points that arise for consideration are :

(1) Whether the punishment imposed on the workman is illegal and liable to be set aside ?

(2) To what relief is the workman entitled ?

(6) Point No. 1 : The charge levelled against the workman Shri P. V. Narasimham, Driver (MV) Gr-I, MV Section is that on 4-5-1992 at about 7.00 p.m., he has unauthorisedly taken the Port Vehicle bearing No. AEV 806 (Trekker) in association with another employee by name Ch. Appala Raju Driver (MV) to the outside of the Port premises for the purpose of consuming liquor. After having drunk, he returned back to MV Section and around 8.00 p.m., along with Ch. Appala Raju, made an attempt of theft of iron block material of size 2½'×2½' which was lying in the tinker section of MV section with an intention to take it away by carrying it on the port vehicle which was kept in his bus unauthorisedly. Thus, he violated Reg. 3(i) of Visakhapatnam Port Trust's (Conduct) Regulations, 1964. Charge sheet dated 24-3-1992 was issued to the workman with these allegations and the workman submitted his explanation dated 24-10-1992 denying the charge and pleading that he stayed in the canteen upto late hours because it was payment day and as he was an office bearer of the canteen, he had to look after the canteen work like collection of arrears of canteen dues. Not satisfied with the explanation, the management appointed enquiry officer, who conducted enquiry and submitted his report. A perusal of the enquiry report shows that the enquiry officer conducted enquiry in 17 sittings over a long period and the delay occurred because of the change of presenting officer from time to time and due to the absence of the delinquent. The enquiry officer

recorded the statements of 5 witnesses i.e. SW1 to SW5 and considered the statements of the delinquent and the witnesses under SE-1 to SE-5, given by them in the vigilance section in the presence of SW5, the Sr. Asst. SW1 is Ch. Appala Raju and his statement is SE1. SW2 is G. Eswara Rao and the statement given by him is SE 2, SW3 is P. Veeraju and his statement is SE 3. SW4 is M. Chandra Rao and his statement is SE 5. SWs 1 to 4 are examined as witnesses to the incident. SW5 is V. Ch. V. Ramana Murthy, Senior Assistant and he is examined to show that SW1 to SW4 gave their statements under SE 1 to SE 5 in his presence. The delinquent himself did not get himself examined before the enquiry officer but he filed defence brief. Thus, he did not subject himself to the cross-examination before the enquiry officer and failed to examine anybody on his behalf as defence witnesses.

(5) It may be noted that SW1 by name Appala Raju is involved in the misconduct along with the delinquent took the vehicle AEV 806 tukker to SE 1 this employee admitted that himself and the delinquent took the vehicle AEV 866 tukker to Kotaveedhi Junction unauthorisedly for drinking liquor and after consuming liquor they came to the section at about 7.30 p.m. and tried to steal the iron block from the tinker shed by taking the assistance of the other persons. He stated that they could not lift it and the other two persons therefore went away and in the meanwhile P. Veeraju and G. Eswara Rao, drivers came running to the tinker shed and in the meanwhile the delinquent P. V. Narasimham went away from the side of lavatory and himself was warned by the said driver. This witness accepted in his statement before the enquiry officer that he prepared this statement and submitted in the presence of the vigilance officer, the delinquent herein and Ramana Murthy SW5. But in his cross-examination which was done 3 days later by taking adjournment by the defence counsel, this witness states that he prepared this statement as per the directing of the vigilance officer, who forced and threatened him. In his cross-examination, by the defence counsel he also goes back what he stated under SE1 and stated that the allegation against him and the delinquent herein is completely false. The enquiry officer dealt with this aspect and rightly believed the statement by SW1 under SE1 and disbelieved what is stated by him during the course of enquiry rightly holding that if SE1 was obtained by force. SW-1 would have brought the same to the notice of the competent authority at the earliest opportunity. He also rightly observed that in his chief examination by the presenting officer, SW1 did not state that he submitted SE1 under duress. But taking advantage of the gap to conduct cross-examination, he changed his attitude and brought in the duress element. Thus, he held that SW1 deliberately changed his version in his cross-examination to favour the delinquent and therefore the same cannot be believed. It may be further noted that the delinquent himself did not give his statement before the enquiry officer stating that SE1 was obtained by the vigilance officer by force. As SE1 is recorded in the presence of the delinquent he would have given a statement before the enquiry officer that it is obtained by force, if this allegation is true. In his

defence brief also, he merely relies upon the statement of SW1 in his cross-examination that it is obtained by force but he himself does not state that it was obtained by force in his presence.

(6) The enquiry officer also considered the statements given by the direct witnesses i.e. SW2 and SW3 along with their statements under SE2 and SE3. These two witnesses also admitted their statements under SE2 and SE3 before the enquiry officer in their chief-examination. But both of them stated in their cross-examination that they did not know about the incident on that day. But nothing is suggested in the cross-examination of these two witnesses that their statements under Exs. SE 2 and SE 3 were obtained by force by the vigilance officer. Under the circumstances, the enquiry officer rightly believed what is stated by these two witnesses under Exs. SE2 and SE3 as it is evident that they were deposing falsely in cross-examination, only to help the delinquent. It is contended strenuously for the delinquent that these two witnesses did not name the delinquent or involved in the misconduct and they did not state that they saw the delinquent at the time of incident. But as per the statement under SE1 by Appala Raju, it is to be seen that the delinquent fled away from the scene by the time these two witnesses came running there. SW4 is the charge hand in the MV section to whom SWs 2 and 3 informed about the incident. MW4 gave his statement in the vigilance section under SE 5. This witness also admits that he gave his statement under SE5 to the vigilance officer but contrary to the statement, he states before the enquiry officer that nobody told him anything on the day in question. But nothing is suggested in the cross-examination of this witness that his statement under Ex. SE 5 was obtained by force. In the circumstances, the enquiry officer rightly believed the statement under SE5 and disbelieved his version before him that he was not informed about the incident on that day.

(7) SW5 is Ramana Murthy, Sr. Asst. working in the vigilance section at the relevant time and he testifies that both the delinquent as well as the above witnesses gave their statements under SE1 to SE5 in his presence and voluntarily and no coercion or duress was exercised on them for giving the statements. He deposes that he was also signatory to SE1 to SE 4. Further, the statement given by the delinquent himself under Ex. SE1 lends support to what is stated by Appala Raju under SE1 in SE4. The delinquent clearly states that at 7.30 p.m. on that day, Appala Raju stated to him that they will take away the iron block from the HV section but the delinquent did not agree for the same and warned him that it is not a good thing to do. He states that he then went inside and at 8.00 p.m. Appala Raju took the trekker (VFT) 806 with 3 labour and kept it near the iron block and he does not know what happened later. Thereafter, the driver by name Bhima Rao, Eswara Rao and Veeraju etc. came and warned Appala Raju and thereafter they went away from the place. He also states that they scolded him also. Thus, virtually the delinquent admitted the entire incident except his involvement in the same. He admits his presence at the time of incident and consultation of Appala Raju with him regarding the stealing of the iron block. In view of what is stated in SE 4, it cannot be believed that the delinquent is not involved in the

incident. In the defence brief submitted before the enquiry officer at page 4, he admits that he stated as in Ex. SE4 and he does not allege any force or duress for giving the statement. The enquiry officer considered all these aspects of the case and rightly came to the conclusion that the charge of misconduct is proved against the delinquent. He rightly disbelieved the defence taken in the explanation to the charge sheet that the delinquent was present in the premise late in the night after working hours for some other purpose in connection with the canteen affairs.

(8) It is vehemently contended by the delinquent that there is no evidence before the enquiry officer as all the witnesses do not speak of the involvement of the delinquent in the incident and therefore the finding of the enquiry officer is perverse and not based on any evidence. But I am unable to find any force in this contention. Then enquiry officer considered the statements admittedly given by all the witnesses, who deposed before him, in the vigilance section and in the light of the same disbelieved what is stated by them in the cross-examination by the defence counsel. All the witnesses admitted their statements given in the vigilance section and the force and threatening alleged by SW1 in submitting his statement under Ex. SE1 is held to be not proved to the satisfaction of the enquiry officer. Thus, the enquiry officer dealt thoroughly with the relevant material before him and the statements under Exs. SE1 to SE 5 and considered the entire circumstances of the case in relation to the material available on record and gave cogent reasons for his findings. In the circumstances, I held that the finding of the enquiry officer is based on the relevant material before him and the same is valid and proper and not liable to be set aside. I hold on this point accordingly.

(9) Point No. 2 : The disciplinary authority, The Chief Mechanical Engineer of VPT gave show cause notice dated 27-12-93 proposing the punishment of reduction to the post of driver (MV). The delinquent submitted his reply to the show cause notice and after perusing the same, the disciplinary authority passed final order on 18-2-94 confirming the proposed penalty. The appeal filed by the delinquent to the Chairman, VPT, is also rejected, appellate authority observing that the serving record of the petitioner is very bad and there are no convincing grounds to interfere with the said punishment. There are no circumstances to show that this punishment is shocking the conscience or it is imposed to victimise the workman. The misconduct proved against the workman is a grave one and the management thought it fit to impose the said punishment taking into consideration the gravity of the misconduct and also the past serving record of the petitioner. Thus, I find there are no grounds to interfere with the punishment imposed on the petitioner by the management. Accordingly, I hold on this point that the punishment imposed on the workman is just and the same is not liable to be set aside.

10. In the result, I pass the award answering the reference as follows : "The action of the management of Visakhapatnam Port Trust in reverting P. V. Narasimham from the post of driver, Grade-I to Driver MV with cumulative effect

justified and the workman is not entitled to any relief". Dictated to steno transcribed by her given under my hand and seal of the Court this the 16th day of May, 1997.

G. JAISHREE, Chairman & Presiding Officer

APPENDIX OF EVIDENCE IN I.T.I.D. NO. 11/95
(C)

WITNESSES EXAMINED

For Workman : None. For Management : None

DOCUMENTS MARKED

For Workman : Nil. For Management : Nil.

नई दिल्ली, 11 जुलाई, 1997

का. आ. 1957 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पारदीप पोर्ट ट्रस्ट के प्रबन्धतंत्र के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-7-97 को प्राप्त हुआ था।

[सं. एल.-38011/1/92-आई. आर. (विषय)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 11th July, 1997

S.O. 1957.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure. in the industrial dispute between the employers in relation to the management of Paradip Port Trust and their workman, which was received by the Central Government on 11-7-1997.

[No. L-38011|1|92-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL : ORISSA :
BHUBANESWAR

PRESENT :

Sri M. R. Behera, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 26 OF
1992 (Central)

Dated, Jeypore, the 26th June, 1997.

BETWEEN

The management of Paradip Port Trust,
P.O. Paradip, Dist. Jagatsinghpur.

.. First Party-
management.

AND

Their workman Sri Sisir Kumar Sahoo,
represented through Paradip Bandar
Shramik Union,

Sector-21, Paradip Port Trust,
Dist. Jagatsinghpur.

.. Second Party-
Workman.

APPEARANCES :

Sri H. K. Mohanty, Dy. Secretary—For the
First Party-management.

Sri S. C. Mohanty, Secretary of the Union.
—For the Second party-workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of powers conferred upon them by clause(d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. L-38011|1|92-IR (Misc.) dated 29-5-1992 :—

‘Whether the action of the management of Paradip Port Trust by not promoting Shri Sisir Kumar Sahoo from the rank of Asst. Teacher, I. Sc. CT to the rank of Asst. Teacher, B.Sc. B.Ed. is justified? If not, to what relief the workman is entitled to?’

2. The case of the second party-Union shortly stated :

Sisir Kumar Sahoo was appointed as an Assistant Teacher, I. Sc. C.T. with effect from 11-8-89 by order No. AD-RSC-III-21-19|89 dated 3-8-1989.

The post of Assistant Teacher, B.Sc. B.Ed. (PCM) had fallen vacant in 1991. The mana-

gement intended to fill-up that post, sent requisition to the Employment Exchange. Said Sisir Kumar Sahoo made representation to the first party-management on 26-6-91 and 29-7-1991 for his selection to the post of Assistant Teacher, B.Sc. B.Ed. (PCM). In pursuance to the representations, Sri Sahoo was allowed to attend the interview held on 12-8-91 at 3 P.M.

One Sri Sankar Charan Khuntia was appointed on daily wages basis from 25-8-90 to 30-8-91. Services of Pradipta Kumar Dashwas also extended from 23-8-91 and he was later regularised as Assistant Teacher, B.Sc. B.Ed. (PCM), but the case of Sisir Kumar Sahoo has not been **considered**.

Sisir Kumar Sahoo while serving as Asst. Teacher, I.Sc. C.T. has been deputed to undertake coaching for the post of Assistant Teacher, B.Sc. B.Ed. (PCM). The Union patronised the cause of Sisir Kumar Sahoo before the management and, thereafter this reference.

3. The management filed written statement on the averment that :

Sisir Kumar Sahoo joined in the Port Trust as an Asst. Teacher, I. Sc. C.T. w.e.f. 11-8-89 with probation period of two years. Since he was under probation, as per Clause-8 of the Paradip Port Employees' (Recruitment, Seniority & Promotion) Regulations, 1967, his case was not taken into consideration for promotion, but however, Sri Sahoo was given the opportunity to appear before the Staff Selection Committee for the post of Assistant Teacher, B.Sc. B.Ed. (PCM) on his own representations, alongwith other sponsored candidates of the Employment Exchange. Sri Sahoo was not found suitable to be promoted to the post of Assistant Teacher, B.Sc. B.Ed. (PCM).

Sri Sahoo being a 'Teacher' is not coming within the definition of 'workman' under the Industrial Disputes Act, therefore, this Industrial dispute is not maintainable.

4. On these rival contention, the following issues have been framed :—

ISSUES

1. Is the reference maintainable?
2. Is the second party a 'workman' as defined in the Industrial Disputes Act ?

3. Is the action of the management of Paradip Port Trust by not promoting Shri Sisir Kumar Sahoo from the rank of Assistant Teacher, I.Sc. C.T. to the rank of Assistant Teacher, B.Sc. B.Ed. justified?

4. To what other relief, if any, the second party is entitled to ?

5. The management has placed reliance is Paras-8 and 10 of citation reported in AIR 1988 SC 1700 (Miss A. Sundarambal, Appellant V. Government of Goa, Daman & Diu and others, Respondent), which reads :—

Para-8 : "In order to be a workman, a person should be one who satisfied the following conditions : (i) he should be a person employed in an industry for hire or reward; (ii) he should be engaged in skilled or unskilled manual, supervisory, technical or clerical work; and (iii) he should not be a person falling under any of the four clauses i.e., (i) to (iv) mentioned in the definition of 'workman' in Section 2(s) of the Act. The definition also provides that a workman employed in an industry to do any skilled or unskilled manual supervisory, technical or clerical work for hire or reward includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, an industrial dispute, or whose dismissal, discharge or retrenchment has led to that dispute."

Para-10. "xx xx We are of the view that the teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post-graduate education cannot be called as 'workmen' within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission of

a noble vocation. A teacher educated children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any, they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'workmen' as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act should be treated as workmen. The acceptance of this argument will under the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless. A liberal construction as suggested would have been possible only in the absence of these words. The decision in *May and Baker (India) Ltd. V. Their Workmen* (AIR 1967 SC 678) (supra) precludes us from taking such a view. We, therefore, hold that the High Court was right in holding that the appellant was not a 'workman' though the School was an industry in view of the definition of 'workman' as it now stands."

6. The second party-union has not been able to distinguish the facts of the instant case at hand with the facts of the cited case. On the ratio of the citation, as aforesaid, this Tribunal is of the view that Sisar Kumar Sahoo is not a 'workman' being a teacher, employed in the school. In the circumstances, the Industrial Disputes Act is not applicable. Sri Sahoo has choosen a wrong redressed forum.

7. In view of the finding arrived that the reference is not maintainable in this forum, it is needless to appreciate further on the factual tated and corrected by me.

Thus, the Award is passed accordingly. Dictated & corrected by me.

M. R. BEHERA, Presiding Officer

नई दिल्ली, 11 जुलाई, 1997

का. प्रा. 1958 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल वेयर हाउसिंग कॉर्पोरेशन के प्रबन्धसूत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-7-97 को प्राप्त हुआ था।

[सं. एल.-42012/5/89-आई. आर. (विधि)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 11th July, 1997

S.O. 1958.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Central Warehousing Corporation and their workman which was received by the Central Government on 11-7-1997.

[No. L-42012/5/89-IR (Misc)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : NEW DELHI

I. D. No. 80/89

In the matter of dispute between :

Shri V. K. Rai S/o Shri P. N. Rai,
S/o Shri Oma Nand Sharma,
Village Rangpuri,
P.O. (Mahipal Pur),
New Delhi-110037.

VERSUS

1. The Central Warehousing Corporation,
4/1, Siri Institutional Area,
Haus Khas, New Delhi-110019.
2. Executive Engineer,
Central Warehousing Corporation,
Construction Cell-I,
303/92, Deepali,
Nehru Place, New Delhi.

APPEARANCES :

Shri P.T.S. Murthy for the workman.

Shri Kul Bhushan for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/5/89-IR- (Misc.) dated nil has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of CWC, New Delhi in terminating the services of Shri V. K. Rai. L.D.C-cum-Typist w.e.f. 22-8-88 is justified. If not, what relief the workman is entitled to?”

2. The representatives for the parties and the workman filed a joint application that the matter has since been settled and no dispute award may be passed in this case. The statement of the workman and his representative to this effect was recorded on 13-5-97. In view of this situation no dispute exists between the parties which has been settled by the parties voluntarily. I, therefore, pass a no dispute award in this case leaving the parties to bear their own costs.

4th July, 1997.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 16 जुलाई, 1997

का. आ. 1959.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उ. प्र. राज्य खनिज विकास निगम लि. के प्रबन्धन के संबन्धित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-97 को प्राप्त हुआ था।

[सं. एन.-29012/39/95-आई. आर. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 16th July, 1997

S.O. 1959.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of U. P. State Minerals Development Corporation and their workman, which was received by the Central Government on 16-7-1997.

[No. L-29012/39/95-IR (Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, DEOKI PALACE ROAD, KANPUR.

Industrial Dispute No. 84 of 1995

In the matter of dispute :

BETWEEN

Nand Kuli Singh alias Nankuli Singh C/o Adhyaksha Bhartiya Cement Udyog Mazdoor Sangh, Dall District Sonbhadra.

AND

General Manager, U. P. Rajya Khanij Vikas Nigam Limited, Pragati Kendra (Dwitiya Fal) Kapoorthala Vyavsaik Kendra Aliganj, Lucknow.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-29012/39/95-I.R. (Misc.), dated 12-7-1995 has referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of U.P. State Mineral Development Corporation Ltd. Lucknow, in terminating the service, of Shri Nankuli Singh an ex-employee of Lalapur Mines w.e.f. 6-5-1997 is justified? If not, to what relief the workman is entitled?”

2. It is unnecessary to give facts of the case in details as ultimately the concerned workman failed to adduce any evidence. Suffice it to say that according to his version he had worked from 15-11-1985 to 5-5-1987 continuously as Mazdoor with the opposite party U. P. Rajya Khanij Vikas Nigam Limited. His services were illegally terminated w.e.f. 6-5-1987 in breach of section 25-F, G and H of I. D. Act.

3. The opposite party has filed reply in which it has been alleged that he had applied in the name of Nandkuli Singh. Later on when after employment he was asked to furnish school certificate he filed the same in the name of Nankuli Singh. Thus he had obtained engagement by practising fraud. Accordingly he discontinued from service.

4. In the rejoinder it has been denied that employment was secured by practising fraud.

5. In support of his case, the management has filed the appointment letter, the school leaving certificate and the order of the management. The concerned workman had filed papers to explain the delay in filing claim as earlier his claim was not adjudicated for want of prosecution on the part of the workman.

6. When a date for evidence was given the concerned workman failed to adduce his evidence. The management also did not adduce any evidence. Thus it is a case of no evidence as none of the documents have been proved.

7. Thus the reference is answered against the concerned workman for want of proof and it is held that the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA Presiding Officer

नई दिल्ली, 16 जुलाई 1997

कां०श्री० 1960.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उ०प्र० राज्य खनिज विकास निगम लि० के प्रबन्धन के संबंध में निम्नलिखित विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट की प्रकाशित करती है, जो केन्द्रीय सरकार की 16-7-97 को प्राप्त हुआ था।

[सं० एल 29012/116/94-आई०आर० (विविध)]

बी०एम० डेविड, डेस्क अधिकारी

New Delhi, the 16th July, 1997

S.O. 1960.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of U. P. State Mineral Development Corporation and their workman, which was received by the Central Government on 16-7-1997.

[No. L-29012/116/94-IR (Misc.)]

B. M. DAVID, Desk Officer.

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, DEOKI PALACE ROAD, KANPUR.

Industrial Dispute No. 49 of 1995.

In the matter of dispute Between :

The General Manager, U. P. Rajya Khanij Vikas Nigam Limited Kapoorthala Commercial Complex Aliganj, Lucknow

AND

Rama Shankar, C/o Damedar Upadhyaya, President, Bhartiya Cement Udyog Mazdoor Sangh, Dalla District Sonbhadra, U. P. 231207.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-29012/116/94/IR (Misc.), dated 4-5-1995, has referred the following dispute for adjudication to this Tribunal :—

“Whether the action of the management of U. P. State Mineral Development Corporation in terminating the services of Shri Ramashanker S/o. Shri Jagdish employed as Mazdoor w.e.f. 29-3-1992 is justified? If not, to what relief the concerned workman is entitled to?”

2. The case of the concerned workman Rama Shankar is that he was engaged as Mazdoor on 21-12-1981 by the opposite party U. P. Rajya Khanij Vikas Nigam, Lucknow at Sonbhadra and continuously worked upto 28-3-1992. Thereafter his services were brought to an end in breach of section 25-F, G and H of Industrial Disputes Act, 1947. Hence, this termination is bad in law.

3. The case of the opposite party is that the concerned workman was engaged as a mustor roll casual labour and he worked from 23-11-1981 to 28-3-1992 as under :—

- (i) From 23-11-1981 to 17-02-1982.
- (ii) From 20-08-1982 to 08-10-1983.
- (iii) From 09-07-1983 to 08-10-1983.
- (iv) From 01-04-1984 to 30-06-1984.
- (v) From 15-01-1991 to 09-04-1991.
- (vi) From 31-01-1992 to 28-03-1992.

From this it comes obvious that in between 1-7-1984 to 14-1-1991 he did not work at all. Further in none of the calendar year he had worked for 240 days. Thus provision of section 25-F of I. D. Act are not applicable to him. There had been no breach of provisions of section 25-G and 25-H of I. D. Act.

4. In support of his case, the concerned workman has filed demand letter Ext. W-1, W-2 and W-3 postal receipts. Further he has adduced his evidence of Sr Assistant Shambhu Nath Tiwari M.W. 1. He has also filed Ext. M-1 and M-3 the extracts of Muster Roll. The concerned workman has stated that he continuously worked from 21-12-81 to 28-3-92. He has denied the suggestion that he did not work between 30-6-1984 and 15-1-1991. He has also denied suggestion that he was given fresh appointment on 15-1-1991 and he worked upto 9-4-1991.

5. Shambhu Nath Tiwari, has stated that after 30-6-1984 the concerned workman did not work. Thereafter he worked from 23-1-1991 to 9-4-1991. Then again he worked from 31-1-1992. In his cross

examination he has admitted that Provident Fund of the concerned workman was deducted. I accept the version of the management because it finds support from Ext-M-1 to M-3 Mustor Roll record and accordingly it is held that in the last spell the concerned workman had worked from 9-1-1992 to 28-3-1992. Accordingly it is held that concerned workman had not completed 240 days in a year during the last spell. Hence, the provisions of section 25-F of U. D. Act are not applicable to him.

6. There is no proof about breach of provisions of section 25-G and 25-H of I. D. Act. It was denied by the authorised representative of the concerned workman that provident fund was deducted from the wages of the concerned workman, hence he should be deemed to be a permanent employee. I am inclined to accept the statement of Shambhu Nath Tiwari that these deductions of provident fund had been effected under some mistake. Hence, no benefit can be extended on this fact.

7. In the end my award is that termination of the concerned workman being not in breach of section of Sections 25-F, 25-G, and 25-H of Industrial Disputes Act, is not bad in law and the concerned workman is not entitled for any relif.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 जुलाई 1997

कां० 1961.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उ०प्र० राज्य खनिज विकास निगम लि० के प्रबन्धन के संबंध निषेजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-97 को प्राप्त हुआ था।

[सं० एन-29012/122/94-आई०आर० (विविध)]
बी०एम० डेविड, डेस्क अधिकारी

New Delhi, the 16th July, 1997

S.O. 1961.—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of U.P. State Mineral Development Corporation and their workman, which was received by the Central Government on 16-7-97.

[No. L-29012/122/94-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR, DEOKI PALACE ROAD, KANPUR

Industrial Dispute No. 83 of 1995

In the matter of dispute :

BETWEEN

Sri Balvinder Singh,
S/o Sri Das Singh,
C/o Upadhyaksha Bhartiya Cement Udyog
Mazdoor Sangh,
Dalla District, Sonbhadra-231207.

AND

Mahaprabandhak,
Uttar Pradesh Rajya Khanij Vikas Nigam Limited,
Pragati Kendra Dwitiya Tal Kapoorthala Vyavsaik
Kendra, Aliganj, Lucknow.

AWARD

1. Central Government, Ministry of Labour, New Delhi, vide its Notification No. L-29012/122/94/IR. (Misc.), dated 12th July, 1995, has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of U.P. State Mineral Development Corporation in terminating the services of Sri Balbinder Singh employed as Mazdoor w.e.f. 29-3-92 is justified ? If not; to what relief the workman is entitled to ?

2. According to claim statement the concerned workman Balbinder Singh is alleged to have continuously worked from 30-4-90 to 28-3-92 as helper with the opposite party U.P. Rajya Khanij Vikas Nigam, Lucknow at Sonbhadra. As he had completed more than 240 days his removal from service after 28-3-92 is in breach of Section 25-F of I.D. Act as such it is bad in law.

3. The opposite party in its written statement has denied that the concerned workman has worked from 30-4-90. Instead their case is that the concerned workman was engaged w.e.f. 31-1-92 to 28-3-92 as a casual labour to do work of regular workers who were not available during this period. After the joining of regular workers no work was taken from the concerned workman.

4. In the rejoinder it is denied that concerned workman was engaged as casual labour. Instead he was taken as permanent employee.

5. In support of his case, the concerned workman has filed Ext. W-1, the demand letter and Ext. W-2 and W-3 postal receipt. Besides he has examined himself as W.W.-1. In rebuttal the management has filed Ext. M-1 to M-3 the copies of Mustor Roll. Further Senior Assistant Shambhu Nath Tiwari M.W.-1 has been examined. Naturally the concerned workman in his evidence has stated that he had worked from 30-4-90 to 28-3-92 con-

tinuously whereas Shambhu Nath Tiwari M.W.-1 has stated that concerned workman has worked from 31-1-92 to 28-3-92. Prior to that he had not worked.

6. In his cross-examination he has admitted that P.F. of the concerned workman was deducted which is usually done in a case of regular employee. Since the case of the management find support from mustor roll extract, I accept their version and hold that concerned workman had worked from 31-1-92 to 28-3-92. In this way he had not completed 240 days. Hence provisions of Section 25-F of I.D. Act were not applicable to him.

7. As regards breach of Section 25-G and H of I.D. Act, there is no evidence worth the name. Hence these points are decided against the workman for want of proof.

8. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 जुलाई, 1997

कां०आ० 1962.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्री बी०सी०सी०एल० के प्रबन्धतंत्र के संबद्ध निधियों और उनके कर्मचारियों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं०-1) धनबाद के पंचाद को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-7-97 को प्राप्त हुआ था।

[संख्या एल०-20012/79/92-आई०आर०(सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 9th July. 1997

S.O. 1962.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. B.C.C.L. and their workmen, which was received by the Central Government on 8-7-97.

[No. I-20012/79/92-IR (C-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Section 10(1)(d)(2A) of the Industrial Disputes Act, 1947

Reference No. 11 of 1993

PARTIES :

Employers in relation to the Management of
Khas Kusunda Colliery of M/s. BCCL.

AND

Their Workmen

PRESENT :

Shri Tarkeshwar Prasad, Presiding Officer

APPEARANCES :

For the Employers—Shri B. M. Prasad, Advocate

For the Workmen—Shri B. B. Pandey, Advocate

STATE : Bihar

INDUSTRY : Coal

Dated, the 1st July, 1997

AWARD

By Order No. L-20012/79/92-I.R. (Coal-1), dated 8-12-1992 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Khas Kusunda Colliery in denying employment to Ms. Bipti Kamin daughter of late Chimni Kamin is justified ? If not, to what relief is the workmen entitled ?”

2. When the case was taken up for hearing Shri B. B. Pandey, Advocate, appearing on behalf of the workman submitted that the concerned workman has already died and as such he submitted to pass ‘no dispute’ award in the reference case.

3. In view of the above submission of Shri Pandey, I render a ‘no dispute’ award in the present reference case.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 9 जुलाई, 1997

कां.प्र. 1983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) के धारा 17 के अनुसरण में, केन्द्रीय सरकार गै. प्रो. मी. मी. मी. के प्रवर्धन के प्रवर्धन निम्न-जहाँ और उनके कर्मचारों के बीच अनुवर्धन में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1), धनबाद के प्रचार को प्रकाशित करती है जो केन्द्रीय सरकार को 8-7-87 को प्राप्त हुआ था।

[सं. प्र. 20012/185/91-आई.आर. (को. 1)]

ब्राज मोहन मैकअधिवारी

New Delhi, the 9th July, 1997

S.O. 1963.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 8-7-1997.

[No. L-20012/185/91-IR (C-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

PRESENT :

Shri T. Prasad, Presiding Officer,

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 130 of 1991

PARTIES :

Employers in relation to the management of Loyabad Colliery of M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the workmen- Shri B. K. Ghose, Member, Executive Committee, Janta Mazdoor Sangh.

On behalf of the employers- Shri G. Prasad, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dhanbad, the 2nd July, 1997

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) and sub-section 2(a) of the I. D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/185/91-I.R. (Coal-I) dated, the 25th November, 1991.

SCHEDULE

"Whether the action of the management of Loyabad Colliery in stopping Shri Radheshyam, Prop. Mazdoor w.e.f. 10-11-1987, from his work and non-payment of wages is justified? If so, to what relief the workman is entitled?"

2. The workman and the sponsoring union have appeared and filed W.S. stating therein that the concerned workman Shri Radheshyam was appointed as Miner/Loader Sendra Bansjora Colliery under M/s. B.C.C.J. in March, 1981 after being satisfied by the management about his identity and genuineness after he was transferred to Loyabad Colliery as Prop. Mazdoor but he was stopped from work from 10-11-87 by the letter of the Dy. C.M.E. Loyabad without assigning any reason. It is also said that during the conciliation proceeding the management stated that the Dy. Chief Personnel Manager Sijua Area intimated that a Police case was instituted against the concerned workman and some other workmen who were appointed at Sendra Bansjora Colliery much age questioning their genuineness including the concerned workman Shri Radheshyam but it is said that on the basis of the Police investigation the workman cannot be said as imposter. The action of the management is not also based on domestic enquiry and this stoppage of work of the workman was fully unjustified. It was therefore prayed that the Award be passed accordingly.

3. I further find that the management has also appeared and filed W.S. stating inter alia that this reference is not maintainable and vague and it is said that the employer was called upon to justify the stoppage with effect from 10-11-87 and for non-payment of wages if the workman is given any relief whole adjudication would fail. It is also said that the concerned workman was appointed as Badli Miner/Loader at Sendra Bansjora Colliery along with 5 other workmen by letter of the management dated 19-3-81 and on 22-11-83 he was transferred to Loyabad Colliery. It was later on learnt that this workman Shri Radheshyam was a fake person and he was impersonating for another person and the case was instituted against him and the workman admitted so during the police investigation and therefore he was stopped from work with effect from 10-11-87 under the instruction of the Dy. C.P.M. vide his letter dated 9-11-87. It is also said that at the time of employment the workman furnished false information regarding his own name, father's name and qualification or previous service which is a misconduct under the Model and Certified Standing Orders. It was also said that no departmental enquiry could be held as Police case was pending and it was prayed that the enquiry be made in this reference itself. It was further prayed that the employer be allowed to adduce evidence in support of their case and a departmental enquiry be held by this Tribunal and the action of the management be held justified and an Award be passed accordingly.

4. A rejoinder was also filed by the management to the W.S. of the workman where the statement of the workman was denied specifically parwise and the same was said to be incorrect, not tenable and denied.

5. I further find that workman has also filed a rejoinder to the W.S. and the rejoinder of the management denying the management's contention specifically and parwise and it is said to be incorrect and not justified. It is finally said by the workman that the Award be passed in his favour.

6. Thus on the basis of the pleadings of the parties the points for consideration are :—

1. As to whether or not the action of the management in stopping Shri Radheshyam, Prop. Mazdoor with effect from 10-11-87 from work and non-payment of wages was justified?
2. If not, what relief or reliefs the workman is entitled?

7. Both the points are taken up together for their consideration.

8. I further find that no oral evidence was adduced by the management although a number of adjournments were granted to it and cost was also imposed and accordingly vide Order dated 20-7-95 on which date the management also did not produce any witness, its evidence was closed and the workman was asked upon to adduce evidence. Only documents have been filed by the management which is Ext. M-1, letter dated 10-11-87 issued by the Dy. C.M.E., Loyabad by which the workman was stopped from work in pursuance of

letter received from Dy. C.P.M. dated 9-11-87 and Ext. M-2 is the letter dated 19-3-81 issued by the Agent, Sendra Bansjora Colliery by which the present workman along with 5 others were allowed to work as Budli Miner/loader with their I. D. card given thereunder.

9. The workman has examined himself as WW-1 Shri Radheshyam who has supported the case and stated that he was appointed as Miner/Loader in Sendra Bansjora Colliery in the year 1981 and in the year 1983 he was transferred to Loyabad Colliery where he worked upto 10-11-87 without issuing any chargesheet. He has further stated that he had filed one L.C. Application for payment or wages after stoppage of work and after order of this Court the management paid him wages upto 6-4-89 and he has demanded for his reinstatement with back wages for the idle period. In Court's question he has replied that till this day no department enquiry has been held against him nor any notice or notice compensation under Section 25-F has been paid. He has stated in his cross-examination that his father's name is Rampati Ram his home address is village Udaina, P.S. Rashra, P.O. Bhelai, Distt. Balia, U.P. and at the time of joining the service he has given the same address. He also said that the management issued a letter asking him to submit the particulars of his address duly certified by the B.D.O. and District Magistrate and he had filed those documents before the management but he has no proof for submitting those documents as he did not obtain any receipt. He had denied that he had not filed those documents and if directed he is ready to file those documents afresh. Further he has admitted that a Police case is pending against him and had denied that the management initiated a departmental enquiry due to pendency of the police case. He also denied that the union raised the dispute before the ALC (C) Dhanbad as no enquiry was held. He has also denied that he has impersonated someone else. No document has been filed by the workman.

10. While arguing the case it has been submitted on behalf of the management that the workman was stopped from work with effect from 10-11-87 as he was a fake person and impersonated someone and he was asked to produce document about his genuinness from the B.D.O./D.M. but he did not produce the same nor any secondary evidence has been produced by him even in this Tribunal and as such it is said that the action of the management in stopping the concerned workman from work was quite valid and justified and he was not entitled to get any relief as claimed.

11. On the other hand it has been submitted on behalf of the workman that the alleged impersonation against the workman is false and concocted and there is nothing to show by the management that he has impersonated someone else and this fact could not have been proved and established after any third person could come forward but not this was and no chargesheet was issued to him and no documentary evidence was produced prior to his stoppage of work. So far the plea that a police case was instituted against him and for that the management did not conduct any domestic enquiry has no ground to withstand and his stoppage of work without issuing any chargesheet and without holding any domestic enquiry tantamounts to terminating his service without any rhyme or reason or against the provision of Section 25-F of the I. D. Act, 1947 as no notice or notice compensation has been given to him at the time of his stoppage, it is admitted fact by the management. In view of Ext. M-1 it is clear that the workman was stopped work in pursuance of letter received from the Dy. C.P.M. Sijua Area dated 9-11-87 but on what basis the Dy. C.P.M. Sijua Area issued such letter dated 9-11-87 is not clear. So far institution of Police Case and alleged admission of the workman before the Police during the investigation is concerned, it is submitted that he has got no leg to stand upon simply that a Police case has been instituted and no workman can be stopped from work without conducting enquiry.

12. I find much force in the pleas taken by the workman that stoppage of work with effect from 9-11-87 without issuing chargesheet or show cause notice or conducting any domestic enquiry is a gross violation of Section 25-F of the I. D. Act and the action of the management cannot be justified in any way. The management has also not refuted the condition of WW-1's evidence that as per order of the Labour Court passed in L.C. Case he has been paid wages till 6-4-89. If the wages were paid to the workman till this

date then what was the basis that further wages were not paid to him after this date.

13. It is also surprising that the management had taken a plea in its W.S. that due to pendency of a Police case no domestic enquiry was held against the workman and this Tribunal should hold such enquiry. How such plea has been taken by the management and its learned lawyer is out of understanding and the management has made itself a laughing stock by taking such childish plea as this Tribunal is not meant for conducting domestic enquiry on behalf of the erring management and no sensible man could ask for that.

14. In view of the above discussions, I find no merit in the contention of the management that stoppage of work and non-payment of wages with effect from 10-11-87 was valid and justified. As this action of the management was taken still seems to be whimsical, illegal and arbitrary as no chargesheet/show cause notice was issued to the workman nor any domestic enquiry was held against the plea of impersonation done by the management and for giving wrong name and address there is nothing to establish his contention of the management. Accordingly the action of the management in stopping the work of the concerned workman and non-payment of wages with effect from 10-11-87 is totally unjustified and illegal and the workman is entitled for his reinstatement from this date with full back wages. Hence the following award is rendered :

"The action of the management of Loyabad Colliery in stopping Shri Radheshyam Prop. Mazdoor w.e.f. 10-11-1987 from his work and non-payment of wages is not justified. Consequently, the concerned workman is entitled for his reinstatement with effect from 10-11-87 with full back wages."

The management is directed to reinstate the concerned workman to his work with effect from 10-11-1987 with full back wages within two months from the date of publication of the Award in the Gazette of India.

15. However, there will be no order as to costs.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 9 जुलाई, 1997

कांशा० 1964--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मंसमं बी०सी०सी०एल० के प्रवन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं०-1), धनवाद के पंचाद की प्रकाशित करती है, जो केन्द्रीय सरकार को 8-7-97 को प्राप्त हुआ था।

[सं० एल०-20012/204/87-बी० 3(ए०)/आई०आर०
(सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1964.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of M/s BCCL and their workmen, which was received by the Central Government on 8-7-1997.

[No. L-20012/204/87-D.III (A)/IR (C-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d) of the
Industrial Disputes Act, 1947

Reference No. 48 of 1988

PARTIES :

Employers in relation to the management of Maheshpur
Colliery of M/s. BCCL.

AND

Their Workmen.

PRESENT :

Shri Tarkeshwar Prasad, Presiding Officer

APPEARANCES :

For the Employers—Shri B. Joshi, Advocate.

For the Workmen—Shri S. N. Goswami, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated, the 2nd July, 1997

AWARD

By Order No. L-20012/204/87-D.III (A) dated 25-3-1988 the Central Government in the Ministry of Labour, has in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Maheshpur Colliery of M/s BCCL, P.O. Kharkharee, Dist. Dhanbad in dismissing Shri Brijnandan Prasad, Magazine Clerk from service w.e.f. 29-8-1975 is justified? If not, to what relief the workman is entitled?"

2s The concerned workman and the sponsoring union have appeared and filed written statement stating therein that the workman, Brij Nandan Prasad, was chargesheeted for alleged misconduct as per advice of the C.B.I. and Charge-sheet was framed by the management and after holding enquiry he was dismissed from service with effect from 29-8-1975. It is also said that a criminal case was also filed by the C.B.I. in which by the judgement of the Hon'ble High Court in the year 1986 the workman was acquitted from all the charges levelled against him. It is said that after getting copy of the judgement the union approached to the management for reinstatement of the workman with full back wages but as the matter was not settled industrial dispute was raised before the Asstt. Labour Commissioner and on failure of the same it was sent to the Ministry and present reference has been made. It is also said that the action of the management in dismissing the workman from service is not justified as he has been acquitted for the same charges by the Court of Law in which he was chargesheeted. It is also said that the management did not prove the charges in the domestic enquiry in all probabilities and he was dismissed just to victimise him and to save the management of wrong doings. It was therefore submitted that award be passed accordingly for reinstatement with full back wages of the concerned workman.

3. I further find that the management of Maheshpur Colliery of M/s. BCCL has appeared and filed written statement stating that the reference is not legally maintainable and the workman accepted dismissal about 12 years and has raised the dispute with some ulterior motive for getting huge amount and due to this delay on the part of the workman the reference itself is bad in law and not maintainable.

4. It is further submitted that the workman was working as Magazine Clerk from January, 1974 to May 1974 and one of his duties was to purchase explosives from the Magazine of M/s. International Explosive Industries on cash payment and to procure cash memos from the company. In course of checking the records it transpired that the concerned workman deposited cash memos against purchase of explosives from the said firm to the tune of Rs. 1,36,735.74 during the aforesaid period January, 1974 to May, 1974 and drawn the amount from the Cashier. It is said that as per procedure the concerned workman used to draw the advance from the cashier for purchase of explosives and used to get the amount adjusted against the cash memos. But on scrutiny of cash memos and documents it was found that he purchased explosives amounting to Rs. 89,871.30 from the said firm in the aforesaid period and after forging cash memo withdrew excess amount from the cashier and misappropriated the amount of Rs. 46,864.44. Thereafter chargesheet dated 9-9-75 was issued to the concerned workman for misconduct of dishonesty in connection with company's property arising out of the transactions in the process of purchase of explosives. The workman submitted show-cause reply and his defence plea was that he submitted the cash memos supplied to him by the said firm and the charge of forging or getting forged cash memos did not arise. It was also submitted that he verified the materials supplied as per cash memos and the same had been issued to different units for consumption and denied the charge of misappropriation of money. Thereafter departmental enquiry was held on 16-9-74 and notice was given to the concerned workman and Shri S. S. Mitra, Personnel Officer was appointed Enquiry Officer. The enquiry was held in presence of the workman and full opportunity was given to him to cross-examine the witnesses of the management and to give his own statement and to examine defence witness and on completion of the said enquiry the Enquiry Officer found him guilty for the charges levelled against him. But the management further wanted to get the matter fully clear and re-enquiry was held on 25-8-75 in presence of the workman and the Enquiry Officer again submitted report holding the concerned workman guilty for the misconduct charged against him.

5. It is said that full opportunity was given to the workman to cross-examine the management's witnesses, to give his own statement and to produce defence witness and no objection was ever raised by the workman regarding process of enquiry or against the Enquiry Officer. After examining the enquiry report at various levels and ultimately agreeing with the finding of the Enquiry Officer the workman was dismissed from service with effect from 29-8-75.

6. A rejoinder has been given by the management to the written statement of the workman and the contention of the workman and sponsoring union has been denied specifically and parawise and the same being not correct and denied. It is finally said that award be passed accordingly holding the action of the management fully justified and the workman is not entitled for any relief as claimed.

7. I further find that a rejoinder has been given by the workman and sponsoring union to the written statement of the management and the plea taken by the management has been denied parawise and specifically and the same is said to be incorrect and denied and also said to be against the documentary evidence on record. It is also said that view of the management about alleged misconduct and with ulterior motive to dismiss the concerned workman for the alleged error or omission not conducted by him and the action of the management is said to be discriminatory, illegal arbitrary and against the principles of natural justice.

8. On the basis of the pleadings of the parties the point for consideration in this reference is--

(a) As to whether or not the action of the management in dismissing the concerned workman, Brij Nandan Prasad from service w.e.f. 29-8-75 is justified?

(b) If not, to what relief the workman is entitled?

9. Both the points being inter-linked are taken together for their consideration.

10. From the case record it appears that vide order dated 11-2-94 it has been mentioned by the then Presiding Officer that the management requested to take up the propriety and fairness of the domestic enquiry for hearing first, but it was found that the workman has not raised the issue regarding fairness and propriety of the domestic enquiry rather in the written statement of the workman it was stated that the domestic enquiry the allegations were not found proved and as this point was not challenged so hearing as preliminary issue or otherwise about fairness and propriety of the domestic enquiry could not be done. Thereafter the case was fixed for hearing on merit. I further find that no oral evidence has been given by either of the parties and some documents have been filed by the management which are Ext. M-1 chargesheet dated 9-9-74, Ext. M-2 reply to the chargesheet dated 10-9-74, Ext. M-3 letter given by the Manager of the management to the workman dated 21-8-75 about re-enquiry of charges against the workman, Ext. M-4 enquiry proceedings and Ext. M-5 enquiry report dated 25-8-75, Ext. M-6 is approval of dismissal of the workman given by the General Manager and Ext. M-7 is dismissal letter issued to the workman dated 29-8-75. No other document has been filed by the management.

11. Similarly, the workman has filed photo copy of the judgement of Criminal Appeal No. 190/80 by the Hon'ble High Court, Ranchi Bench arising out of the judgement of Mr. Ram Chandra Prasad, Special Judge, CBI, South Bihar, Patna dated 20-12-80 and by this judgement dated 18-10-85 conviction and sentence of the Appellant (present workman) was set aside and appeal was allowed and he was acquitted from all the charges under Section 409, 467, 477-A of I.P.C. and 5(1) and 5(2) of the Prevention of Corruption Act (Ext. W-1). He has also filed photo copy of Identity Card issued on 2-8-73, marked Ext. W-2, in which he was designated as Magazine Chaprasi.

12. As there is no oral evidence in this reference on behalf of either party so the case is based purely on the documents produced on record.

13. It has been urged on behalf of the management that the concerned workman was chargesheeted for the misconduct of dishonesty to the propriety of the management and defalcated huge amount of Rs. 46,864.44 deliberately after drawing the same as advance from the cashier of the Colliery for purchase of explosives from M/s. International Explosive Industries in the period January, 1974 to May, 1974 when he was working as Explosive Clerk in the Colliery. This payment totalling Rs. 1,36,735.74 was taken by the workman during the period out of which actual cash voucher worth Rs. 89,871.30 was deposited by him from the aforesaid firm and rest amount of Rs. 46,864.44 was found to be forged and fabricated and he indulged into conspiracy of misappropriating the said amount of the management. Thereafter chargesheet was issued to the workman to which he gave his reply and domestic enquiry was also held in presence of the workman and again re-enquiry was held in which the workman was present and on both the occasions full opportunity was given to the workman to cross-examine the management's witnesses, to give his own statement and the enquiry was conducted as per principle of natural justice and no objection was ever raised by the workman against the procedure or the Enquiry Officer. It is also pointed out that the workman declined to cross-examine the management's witnesses on the plea that he has given all the facts in the show-cause reply and while giving his own statement he simply stated this fact and no further statement was given by him to defend himself nor any defence witness was examined by him. Thereafter the enquiry was closed and the Enquiry Officer submitted his enquiry report holding him guilty of the charge of misconduct and on asking of the management re-enquiry was held by the same Enquiry Officer against the workman and notice was again given to him vide Ext. M-3 and this re-enquiry was again held in presence of the workman but no defence witness or anything pertaining to his own defence was given by the workman and the Enquiry Officer found him guilty for the charge for the misconduct and submitted his report and after examining the report at various levels, by the management and agreeing with the finding of the enquiry report the workman was dismissed with effect from 29-8-75 vide Ext. M-7. However, it is submitted that after his dismissal in August, 1975 the

workman never raised any dispute under the Industrial Disputes Act and he was also found guilty and convicted and sentenced in the criminal case by the Special Judge (CBI), South Bihar, Patna against which criminal appeal was filed in the Hon'ble High Court and after being acquitted in this appeal vide Ext. W-1 which was delivered on 18-10-85 the workman and the union approached to the management for his reinstatement with full back wages which was not conceded after lapse of so many years and thereafter, as it appears from the record, the dispute was raised under the Industrial Disputes Act before the A.L.C. in the year 1987 i.e. after lapse of 12 years and after the said disposal of F.O.C. by the Conciliation Officer, the present reference has been made in the year 1988. In this view of the matter it is submitted that such long in flux of time it became stale claim. In this regard the authorities as given by the Hon'ble Supreme Court in the case—

(i) Dhalimst Eotkd Ltd. Vs. Their Workmen—(L.C.J.-Vol-IV page 2228),

(ii) Inder Singh and Sons Ltd. Vs. Their Workmen (S.C.L.J.-Vol-I page 104) and Rafan Chandra Samanta and others Vs. Union of India and others (1993 Lab. I.C. 1672) have been referred where it has been held by their Lordships—"Delay not only defeats remedy but it extinguishes the right as well." It is submitted that as this dispute has been raised after lapse of 12 years from the dismissal of the workman, the remedy and rights both have been defeated in view of the aforesaid authorities of the Hon'ble Supreme Court and it has become stale claim and cannot be agitated after such long period and on the strength of acquittal of the workman by the Appellate Authority he can't claim relief of reinstatement and back wages.

14. It is also submitted that by another ruling given by the Hon'ble Supreme Court in the case of J. K. Spinning and Weaving Ltd. Vs. Their Workmen (S.C.L.J.-Vol-II page 1438) which went upto the Hon'ble Supreme Court where it was held by their Lordship that the Tribunal is bound to decide the issue on the basis of the matters available in the enquiry papers and enquiry report and cannot set aside the order of dismissal on the ground of acquittal of a workman in the criminal trial.

15. It is submitted that in view of the aforesaid ruling of the Hon'ble Supreme Court there is no scope for the workman to take advantage of acquittal order passed by the Hon'ble High Court in the above noted criminal appeal filed by him.

16. It is finally said that the charge of misconduct of dishonesty was levelled against the workman which was fully established in the departmental enquiry and in that view of the matter even after acquittal of the workman by the criminal charge this finding of misconduct could not in operation and such misconduct being very serious nature order of dismissal passed against him was quite justified and the workman is not entitled for any relief as claimed.

17. On the other hand, it has been submitted on behalf of the workman that he has been falsely implicated in this case and from the documents of the management i.e. Identity Card issued to the workman, Ext. W-2 he has been designated as Explosive Chaprasi and not Explosive Clerk. However, he was issued chargesheet mentioning as Explosive Clerk and that is why in the reply it was mentioned below his signature "Explosive Clerk", rather he was all along working as Explosive Chaprasi and it was none of his duty to receive advance from the Cashier to purchase explosives and to submit cash memo rather his duty is to keep explosives properly received and distribute the same to the concerned authorities of the mines on their requisitions and so far receiving the advance and purchasing of the same and payment of its price was not concerned with him and he has been falsely chargesheeted for the same and a number of lacuna in the evidence given by the Cashier or the other witnesses examined on behalf of the management in the enquiry and also in the criminal case which has been discussed by the

Hon'ble Justice in his judgement. Ext. W-1 and after considering all aspects of the case the appeal filed by him against the conviction and sentence passed by the trial court, Special Judge, CBI, Patna in the criminal case was set aside and the appeal was allowed and he was acquitted from all the charges framed against him.

18. In this view of the matter it is submitted that the contention of the management that he was working as Explosive Clerk and that so-called vouchers were forged have also not been established even by Handwriting Expert that they were forged by the workman or at his instruction and if any forgery was done by some one for that he could not have been held guilty and it is incorrect to say that the charge levelled against him was established. It is also pointed out that he refuted in his reply given to the Enquiry Officer which was not considered properly nor full opportunity was given to him to cross-examine the witness produced by the management or to give his own statement and to examine defence witness. The objection raised by him in the enquiry was also not considered properly by the Enquiry Officer and the Cash Book, Explosive Stock Register etc. were also not produced in the said enquiry nor these were considered properly and only on their proper verification and by tallying entries in these register it could have been established whether any less quantity of explosive or less amount was received by the management's store or not and the said enquiry was half-hearted conducted by the Enquiry Officer. It is also not clear that re-enquiry was ordered to be done by the management by the same Enquiry Officer. It also goes to prove that the first enquiry report given by the Enquiry Officer was not considered to be proper by the management and in that case order for re-enquiry might have been passed and it goes to strengthen the contention of the workman that the said departmental enquiry was not conducted by the Enquiry Officer and he has not conceded genuine demand of the workman by calling all those concerned document for its perusal and verification. It is also incorrect to say that conducting of departmental enquiry has been held in the said issue and no such order has been passed by this Tribunal holding the said domestic enquiry to be fair and proper.

19. It is also pointed out that there is no merit at all in the contention of the management that despite acquittal of the workman further criminal charge by the Hon'ble High Court in the appeal the charge of misconduct levelled against the workman is still exists and action taken against him by the management was fully justified and it does not require any re-consideration or modification by the workman. It is true that criminal case and holding of domestic enquiry can go side by side but it is also true that when criminal charge for the same occurrence fails during trial appeal the holding of the workman guilty for alleged misconduct arises of the same occurrence becomes shaky and it can withstand a test of legal scrutiny. It is submitted that the present case certainly when the order of dismissal against the workman was passed vide Ext. M-7 in hot haste at that time indement of the Appeal Court. Ext. W-1 was not available but subsequently all the evidence produced by the C.B.I. in the trial court have been examined at length and pain taken by the Hon'ble Appellate Court and those evidence have not withstanding any scrutiny made by the Hon'ble Justice and a number of doubts have been raised about genuineness of those documents and validity of the plea taken by the prosecution in the said criminal trial against the workman where he was an accused. It is also clear that this Ext. W-1 judgement of the Hon'ble High Court was delivered dated 18-10-85 and there is nothing to show on record that the management has gone to the Hon'ble Supreme Court in SIP and as such this judgement given by the Hon'ble High Court Ext. W-1 has got its finality on the matter.

20. It is further submitted that there is nothing to show that the copy of the said enquiry report or re-enquiry was served upon the workman prior to his dismissal and the workman has said in his reply to show cause about non-supply of enquiry report. He was also not given opportunity to represent before the higher management against the said enquiry report and this is also a lacuna in the said domestic enquiry. It is further submitted that so-called domestic enquiry was not in accordance with principle of

natural justice as full opportunity was not given to the workman to present his case nor the Enquiry Officer took pains to call for records and registers which were in the custody of the management and which prayer was made by the workman and these were not perused and considered by the Enquiry Officer in the said enquiry and no finding was given and as such he could not have reached on a logical conclusion that the charge levelled against the workman was fully established and that he was found guilty for misconduct of dishonesty. I find much force in the plea taken by the workman and certainly in this view of the matter it can't be said that the said domestic enquiry was fair and proper and in accordance with principles of natural justice.

21. It is true that as per ruling of the Hon'ble Supreme Court the Tribunal has to decide the issue in the reference on the matters available in the enquiry papers and after going through exhibits including enquiry proceeding and report Exts. M-1 to M-7 it is clear that all steps were not taken by the Enquiry Officer to compel the management to produce all the documents called for by the workman for his scrutiny and perusal nor this point was properly considered that this workman was Explosive Chaprasi and not Explosive Clerk and only the persons interested on behalf of the management was examined as its witness in the case and this point also was not properly considered and if some other vouchers is said to be forged then how the workman who was not Explosive Clerk rather Explosive Chaprasi could be held guilty for the alleged forgery of those vouchers. In a criminal trial this fact was looked into and those documents were examined by the Handwriting Expert and the Expert has not clearly held that those so-called forged documents were in the handwriting of the workman.

22. After considering all these matters in details as discussed above, I find that action of the management in dismissing the workman from 29-8-75 cannot be said to be justified, legal and genuine. This point also becomes crystal clear in view of the judgement of the Hon'ble High Court in the appeal filed by the workman vide Ext. W-1 where he has been acquitted of all the charges arising out of the same occurrence.

23. In the result, the action of the management in dismissing the workman is not justified and the workman is entitled for the relief as claimed for his reinstatement with effect from 29-8-1975, the date of his dismissal. Both the points are decided in favour of the workman.

24. So far payment of back wage is concerned it is clear that nothing was paid to the workman for his idle period but for hasty action of the management and it is also true as per principle of no work no pay the management cannot be asked to pay for all those long years as back wages. I find that the dispute was raised before the A.L.C. in the year 1987 after passing of the judgement in appeal by the Hon'ble High Court and this reference has been made, but the date and month of the raising the dispute is not available on the record. However, this reference has been made by the Ministry on 25-3-1988 and accordingly, the management is directed to pay atleast 30% of full back wages to the workman from March, 1988 for his idle period.

25. Hence, the award—

The action of the management of Maheshpur Colliery of M/s. BCCL, P.O. Kharkharee, Dist. Dhanbad in dismissing Shri Brinandan Prasad w.e.f. 29-8-1975 is not justified and the workman is entitled for his reinstatement from the date of his dismissal i.e. w.e.f. 29-8-1975 and the management is further directed to pay him 30% of full back wages from March, 1988.

The management is further directed to reinstate and pay back wages as directed above to the workman within two months from the date of publication of the award in the Gazette of India.

However, there will be no order as to costs.

TARKESHWAR PRASAD, Presiding Officer

सर्द दिवसी. ९ जुलाई. 1997

कांथा० 1965-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स टिस्को के प्रबन्धत्व के संबद्ध निवासियों और उनके कर्मचारियों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं-1), धनबाद के पंचाद को प्रकाशित करती है जो केन्द्रीय सरकार को 8-7-97 को प्राप्त हुआ था।

[सं० एन-20012/358/91-आई०आर० (सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1965.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. TISCO and their workmen, which was received by the Central Government on 8-7-97.

[No. L-20012/358/91-IR(C-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) (2A) of the Industrial Disputes Act, 1947

Reference No. 48 of 1993

PARTIES:

Employers in relation to the management of West Bokaro Colliery of M/s. TISCO.

AND

Their Workmen.

PRESENT:

Shri Tarkeshwar Prasad, Presiding Officer.

APPEARANCES:

For the Employers: Shri B. Joshi, Advocate.

For the Workmen: Shri R. S. Murthy, Advocate.

STATE: Bihar. INDUSTRY: Coal.

Dated, the 25th June, 1997

AWARD

By Order No. L-20012/358/91-IR. (Coal-I) dated 6-1-93 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

"Whether the dismissal of Shri P. C. Mukherjee an Ex-Estimator by the management of West Bokaro Collieries of M/s. TISCO Ltd. P.O. Ghatotand, District Hazaribagh w.c.f. 20-8-90 is justified? If not, to what relief the concerned workman is entitled?"

2. The concerned workman has appeared and filed written statement stating therein that he was employed as Estimator in the West Bokaro Colliery with effect from 24-1-1977 and his service record was unblemished, but alleged chargesheet dated 5-6-90 was issued to the workman showing misconduct which was baseless. However, the workman gave his show-cause reply and the chargesheet was not competent as per Standing Orders, but the explanation was not accepted and

disciplinary proceeding was initiated vide letter dated 18/20-6-90 and Sri D. Banerjee, Personnel Officer, was appointed as Enquiry Officer and has stated that the Manager (CE & TS), West Bokaro was not competent to order such enquiry and this has vitiated the enquiry and Sri D. Banerjee was direct subordinate to the Manager and he was not competent to hold a fair and proper enquiry. It is also said that the management's representative was examined as management's witness, namely, S. Ghosh Dastidar who was an Investigating Officer of the present case and he should not have been appointed management's representative. Only one witness, Bipin Jha, Engineer, was examined on behalf of the management and no other witness was produced. Thereafter the statement of the workman was recorded and cross-examined by the management representative. Enquiry report was submitted on 27-7-90 to the Manager, West Bokaro and the enquiry report was perverse and beyond his jurisdiction and it was also biased report. Thereafter the workman was dismissed from service with effect from 9/20-8-1990 and this dismissal was quite illegal and improper. It was also not mentioned in the dismissal letter as to whether the finding of the Enquiry Officer was accepted by the management or not and the dismissal is vitiated and it became null and void. It was also said that the domestic enquiry was held against the principles of natural justice. It is further said that the contract was given to M/s. Mukherjee, Chowdhury and Associates Pvt. Ltd. concern and it is said that payment of Rs. 16,154.91 was made to him as way of running bill to the contractor and final payment was yet to be made which was pending and all these bills were signed by the Engineer, Sri Bipin Jha and it was incorrectly held that loss was caused to the company by way of such excess payment. It is further pointed out that the concerned contractor have 20 running bills besides the final bill and the workman was removed from proceeding the bills from bill No. 16 and the concerned workman was not concerned with the particular job and there is nothing to show as to whether any effort was made to recover the said excess payment to the contractor from the running bill Nos. 16 to 20 and if such recovery was made there was no question of any loss causing to the company and the dismissal of the workman on this count becomes null and void, illegal and unjustified.

3. It is also pointed out that the concerned contractor was under the direct charge of Bipin Jha who was management's witness in the domestic enquiry and the measurement of different jobs were taken and entered in the measurement books and entire job was done by the concerned workman and the latter who has also signed after being satisfied correctness of entries made thereunder. It is further stated that the defence taken by the workman was not considered by the Enquiry Officer in his enquiry report. It is further pointed out that the concerned workman was Estimator whereas the job of supervision of the civil engineering job is the responsibility of the Overseer and there is separate post of Overseer and Estimator under the management and the workman was only concerned with preparation the quantity estimate relating to the civil engineering job, bill of quantities and so far supervision work is concerned it is done by the Overseer and recording of measurements of job and preparation of bills of contractor is part of duty of the Overseer, but the same work was also been taken by the management from the workman although he was not Overseer, and photo copies of notification Nos. 12/91 and 19/91 issued by the management in April, 1991 and June, 1991 and these are two different cadre posts. It is further said that even for the sake of argument if it is taken to be the charges levelled against the workman, although not admitted, in that case too the punishment awarded to the workman for such wrong entry made in the measurement book about alleged measurement the punishment was highly disproportionate to the alleged misconduct of the workman. It is also submitted that although no evidence was led before the Enquiry Officer about previous such wrong measurement taken by the workman or warnings have been given to him same has been looked into by the Enquiry Officer and made basis for coming to the conclusion on shifting the charge against the workman and this action of the Enquiry Officer makes his enquiry report bias and based on extraneous consideration other than oral and documentary evidence produced before him in the said enquiry and on the basis of such biased report of the Enquiry Officer alleged dismissal of the workman was highly disproportionate to the alleged charge said to be proved against him and the dismissal is said to be

quite unjustified and he is liable for reinstatement with full back wages. It is finally said that award be passed accordingly in favour of the workman.

4. I further find that the management has appeared and filed written statement stating, inter alia, that the reference was not legally tenable and that the workman was deputed to supervise the contract jobs of construction of flats undertaken by the contractor, M/s. Mukherjee, Chowdhury & Associates Pvt. Ltd. It was his duty to ensure that the contractor carried construction jobs as per the plans and design and certify the quantity of work under different heads and to check bills submitted by the contractor for passing it. It is said that it was found in course of performing the duties as envisaged above the workman connived with the contractor and showed excess measurement than the actual measurement as per works executed by the contractor and excess payment was made to the contractor and earlier also such excess measurement was shown for which he was warned on different dates in the months of June and August, 1989. It is said that on 1-6-90 the Manager (C.E. & T.S.) of the colliery along with the Dy. Manager made spot inspection and took the measurement of the works of the constructions job and entries made in the measurement book by the concerned workman was found to be excess for which excess payment was made to the contractor on such inflated bills due to misconduct of the workman amounting to Rs. 16,154.99 paise causing loss to the management and showing favour to the contractor. It is further said that chargesheet was issued to the workman for causing such loss to the management and showing favour to the contractor for excess payment on the basis of which running bill and show-cause given by him was not found satisfactory and domestic enquiry was held in his presence as per principles of natural justice and full opportunity was given to him to cross-examine the management's witnesses, to give his own statement and to examine defence witnesses and full opportunity was given to him for the purpose and thereafter the Enquiry Officer found him guilty for the offence and submitted enquiry report, copy of which was given to the workman and finally he was dismissed from service as per issuance of domestic enquiry by the competent authority with effect from 20-8-90.

5. In this way it is pointed out that the action of the management is quite valid and proper and the dismissal of the workman with effect from 20-8-90 was quite justified and there is no merit at all in the claim of the workman for his reinstatement with back wages and it deserved to be dismissed.

6. By way of rejoinder the contention of the workman as given in written statement has been denied parawise and specifically and the same is said to be not correct and denied. Some of the contention of the workman as taken in para 22 is said to be irrelevant and in other paras 23, 24, 25 and 26 are said to be incorrect and denied. It is finally said that award be passed in favour of the management.

7. I further find that a rejoinder has been filed by the workman to the written statement filed by the management and plea taken by the management specifically and parawise in its rejoinder and the same is said to be incorrect, baseless and denied. It is also said that the action of the management was motivated and taken just to victimise the workman.

8. On the basis of the pleadings taken on behalf of the parties the point for consideration in this reference is :-

(a) As to whether or not the action of the management in dismissing the concerned workman from 20-8-90 is just and valid ?

(b) If not, what other relief or reliefs the workman is entitled ?

9. Both the points being inter-linked are taken together for their consideration;

10. It is to be noted here that the fairness of holding of domestic enquiry was taken for hearing as preliminary point and vide order dated 4-9-96 the same has been held to be fair and proper and thereafter the case was fixed for hearing on merit.

11. Only one witness was examined on behalf of the management, MW-1 the Enquiry Officer while hearing the preliminary point and his evidence has dealt with in the above order dated 4-9-96 and at the time of hearing matter on merit no oral witness on either side has been adduced nor any document has been produced to substantiate the contention. However, written arguments have been filed on behalf of the parties which are on record.

12. While arguing the case it has been submitted on behalf of the management that the domestic enquiry conducted by the management against the delinquent workman has been held to be fair and proper by this Tribunal vide order dated 4-9-96 and thereafter only the point to be considered is about quantum of punishment given to the delinquent workman. It is further submitted that from the domestic enquiry it is clear that previously also the workman has indulged in making wrong entries causing benefit to the contractor and causing loss to the management for which three warning letters were given to him in June and August, 1989, but the workman did not improve. Further again in the instant case also he was found giving over and excess measurement to the contractor and also over-looking the work not done in accordance with plan and on the basis of such measurement given by the workman which was found to be incorrect and the measurement was made on 1-6-90 by the Manager and Dy. Manager in his presence and he admitted these measurement to be correct and bills were verified and checked and were in excess of actual quantities. On the of such wrong measurement given by the workman excess payment was made to the contractor and causing financial loss to the company and it was serious misconduct on the part of the workman causing dishonest act to his work and no management can keep such dishonest workman in its service and misconduct cannot be said to be of minor type and he did deserve any leniency in the matter of punishment and the order of dismissal was quite just and proper. In this connection the authority of the Hon'ble Supreme Court as reported in SCLJ-1991-93 page 1124—The State of Punjab Vs. Ram Singh has been referred where it has been held by their Lordships that—"A single act of corruption is sufficient to award an order of dismissal."

13. It is further submitted that the order passed by this Tribunal about holding the preliminary issue of domestic enquiry fair and proper it has been challenged by the workman in the written argument filed on his behalf and legal lacuna have been shown in conducting domestic enquiry. It has also been pointed out that circumstances of the Enquiry Officer was based on extraneous material rather the evidence on record and it has also been considered by the Enquiry Officer that earlier warning was given to the workman which was beyond the fair enquiry to be done by the Enquiry Officer. It is also submitted that the workman has tried to shift his responsibility to the Engineer Incharge who was examined as MW-1 in the domestic enquiry and it has also been pleaded that he was simply Estimator and not Supervisor or Overseer and supervising the work and process of taking of measurement was not his work. It is submitted that this sort of duty was being performed by the work for last several years and never he had objected to the management that being on the post Estimator no work of overseer and supervising the work of construction of the contractor should be taken from him. It is further submitted that the plea of the workman that the contractor was working under the direct control of the Engineer Incharge, Sri Bipin Jha, who was examined as MW-1 in the domestic enquiry and, if any mistake was done in taking measurement he should also have been held guilty as measurement was taken in his presence and calculation of final work was also made after discussion with Sri Jha, Engineer and that no action was taken against him and only action was taken against him was illegal. It is submitted that the workman had tried to shift his duty and responsibility to the Engineer and from his action the workman cannot absolve himself that he had not given wrong entry of measurement showing excess works and causing excess payment to the contractor and he has done any connivance with the said contractor. It is also pointed out that the Disciplinary Authority has agreed with the report of the Enquiry Officer and considering all the materials on record has passed the dismissal order considering seriousness of misconduct of the workman.

and this act of misconduct of the workman would not be minimised in the fact that these were running bills and final payment was yet to be made to the contractor and if any excess payment was made it can be adjusted in the final payment.

14. It is said to be different part of the story but misconduct conducted by the workman was fully established by his admission in the domestic enquiry and accordingly the punishment of dismissal was given to him by the competent authority and this action of the management was fully justified and no sympathy could have been shown to the workman as he was in habit in doing such wrong and in the previous three warning letters were issued to him for such misconduct. Accordingly, it is submitted that the said dismissal of the workman from service was quite legal and justified and award be passed accordingly as the workman is not entitled for any relief as claimed.

15. On the other hand, it has been submitted on behalf of the workman that the action of the management in dismissing the workman from service with effect from 20-8-90 was highly arbitrary, illegal and unjustified and discriminatory in nature. It is also submitted that he was working in the post of Estimator and work of taking measurement, making entry in the measurement book and checking of these entries are duties of that of Overseer and there are different cadre post of Overseer as per Standing Orders of the company and this workman was compelled to do the work of estimator as overseer and out of the work some mistake might have taken place in making measurement which was done alongwith Sri Jha, Engineer Incharge and entries made in the measurement book were also done after discussion with Sri Jha about mode of measurement and calculation of the work done. It was also submitted that only the witness was examined in the domestic enquiry is Bipin Jha who himself is a party to mistake of the workman and no action has been taken against Sri Jha. Engineer Incharge and this poor workman has been made scapegoat for the reason best known to them. It is further submitted that it has been admitted by Sri Jha in his evidence and also presenting officer who was examined as witness by the Enquiry Officer that final payment was yet to be made to the contractor and these were running bills in which it is said excess payment was made by the contractor causing financial loss to the company but when the final bills is pending yet to be finalised then there is no question of causing any loss to the company and if any amount was paid it is subject to adjustment in the final bill of the contractor. It is also pointed out that there were 20 running bills besides the final bill and this workman was removed from supervising and checking the bills of the contractor from rest bill Nos. 16 and thereafter there is no evidence that any extra payment was made to the contractor and any effort was made by the management to get those extra amount adjusted in the rest of the four running bills which were not checked and processed by this workman. In this view of the matter the charge levelled against the workman itself is null and void and without any basis.

16. It is also submitted that the action also should have been taken against Sri Jha, MW-1 of the domestic enquiry and on whose sole evidence he has been held guilty by the Enquiry Officer and the evidence of the presenting officer ought not to have been taken into consideration as he was not cited as witness in the list of witness and he was examined as witness by the Enquiry Officer without any basis. It is also submitted that Sri Bipin Jha, Engineer Incharge was all along present while taking the measurement by this workman of the work done by the Contractor and calculation of work made by them after discussion of entries made in the measurement book on which both of them have signed and in this view of the matter this workman alone ought not to have been held guilty by the management, but no action was taken against the Engineer Incharge and only this workman was chargesheeted for the alleged misconduct and wrong charge was levelled causing financial loss to the company which was never done by the workman. It is further pointed out that the action of the management is quite illegal and discriminatory in nature which is also unfair labour practice and that cannot be substantiated in a court of law and it cannot stand legal scrutiny.

17. It is further pointed out that in cross-examination MW-1 Sri Bipin Jha has admitted that there is difference between processing of a bill and certifying the same and processing of a bill covers certification by various agencies at various hierarchical levels. As pointed out earlier these were running bills against which payment was made on the basis of said excess measurement entered into measurement book by the workman and Engineer Incharge and the latter has admitted that the Engineer Incharge has to check the measurement before processing the bill. This bill also processed through officers at various level and finally payment was made and all these officers might have gone through the bill and the measurement entered into there, as such only the workman cannot be held responsible for any wrong done like this. It is also submitted that the concerned workman has been victimised by the management and this action of the management is certainly operative in nature and constituting unfair labour practice and also pre-determined acts of the management as the Enquiry Officer has not discussed the defence plea taken by the workman in his enquiry report and also considered extraneous materials which was not on record and has also vitiated domestic enquiry by examining management's representative as witness which he ought not have done in any circumstances and by this way the enquiry itself was vitiated. Moreover, the copy of enquiry report was not given to him and no opportunity was given to him to file representation against the finding of the Enquiry Officer before issuance of dismissal order and while issuing dismissal letter nowhere it was mentioned by the issuing officer that he was agreed with the finding of the Enquiry Officer and accordingly he was dismissed. There also a legal lacuna and the action of the management in dismissing the workman cannot be justified in any way.

18. My attention in various decisions have been drawn which are—(1) East Indian Hotel Vs. Their Workmen (SCLJ-II-291-SC), (2) Scooters India Ltd. Vs. Their Workmen and Ors. (1989 Lab. I.C. 1043-SC), (3) Baldev Singh Vs. Presiding Officer, Labour Court & Ors. (1987 Lab. I.C. 22-SC) and (4) Ved Prakash Gupta Vs. Delton Cable Ltd. (1984 (48) FLR-417-SC).

19. By referring above noted authorities it has been tried to show that the workman has been victimised by the management for no fault of his and if for the sake of argument, although not admitted, if it is taken into consideration that if any mistake or wrong was done by the workman then the punishment of dismissal given to him was sockingly disproportionate to the wrong and it is also submitted that punishment of dismissal is economic death punishment which cannot be used invariably and certainly the alleged wrong done by the workman by giving some excess measurement and consequence to which some extra payment was made to the contractor in the running bills subject to be adjustment in the final bill which was still pending with the management, so there was no question of causing loss of Rs. 16,000/- and odd to the management.

20. After going through the oral and documentary evidence on record and also points of arguments as advanced on behalf of the parties, I find much force in the plea taken by the workman that certainly the order of dismissal issued against the workman was disproportionate to the alleged wrong committed by him. It is also clear that the measurement was taken jointly by the workman and Sri Bipin Jha, Engineer Incharge and under whose supervision the contractor was working and the entries were made in the measurement book by Sri Jha after discussing with the workman and the measurement book bears signature of both of them and as such if any wrong was done it was done jointly by the workman and Sri Bipin Jha, Engineer Incharge. But surprisingly no action was taken by the management against Sri Jha, rather he was made a witness against the workman in the so-called domestic enquiry which makes intention of the management clear that it was pre-determined to shake the workman on the evidence of such a person who himself was party to the said wrong. Moreover, interestingly the Enquiry Officer also examined the management's representatives as witness which is also against the principles of natural justice. All these actions of the management and the Enquiry Officer taking into consideration in broader spectrum it is clear that the action of the management in dismissing the workman is certainly unjustified, arbitrary and discriminatory in nature which also constitutes unfair labour

practice which the management cannot be allowed to act upon. Accordingly, the workman is entitled for his reinstatement in service from the date of his termination with effect from 20-8-90.

21. So far the question of payment of wages is concerned, considering the principle of no work no pay certainly the workman has not done anything for these long years, but not for his fault but for the arbitrary and discriminatory action of the management. As such, the management must pay atleast 30 percent of full back wages to the workman for the idle period. Accordingly, both the points are decided in favour of the workman.

22. Hence, the award—

The dismissal of Shri P. C. Mukherjee, an Ex-Estimator by the management of West Bokaro Colliery of M/s. TISCO Ltd. P.O. Ghatotand, Distt. Hazaribagh, w.e.f. 20-8-1990 is not justified. The management is directed to reinstate the concerned workman in service w.e.f. 20-8-1990 with 80 per cent full back wages within two months from the date of publication of the award in the Gazette of India.

However, there will be no order as to costs.

TARKESHWAR PRASAD, Presiding Officer

नई दिल्ली, 9 जुलाई, 1997

कां० प्र० 1966 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार में इंडियन एयरलाइन्स के प्रबन्धन के संबंध में निोजको और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं०-1, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8/7/97 को प्राप्त हुआ था।

[संख्या एल-11012/14/89-आई०आर० (द्विविध)/
आई०आर० (सी-1)]

ब्रज मोहन, उस्क अधिकारी

New Delhi, the 9th July, 1997

S.O. 1966.--In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No.1, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Airlines and their workmen, which was received by the Central Government on 8-7-97

[No. L-11012/14/89-IR (Misc.)/IR(C-1)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1 AT

DHANBAD

PRESENT :

Shri T. Prasad, Presiding Officer

In the matter of an Industrial Dispute under
Section 10(1)(d) of the I.D. Act, 1947

Reference No. 59 of 1990

PARTIES :

Employers in relation to the management of
Indian Airlines, Patna and their work-
man

APPEARANCES :

On behalf of the Workman—Shri G. Prasad,
Advocate

On behalf of the Employers—Shri R. S. Mur-
thy, Advocate

STATE : Bihar

INDUSTRY : Airlines

Dated, Dhanbad, the 1st July, 1997

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) and sub-section 2(A) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-11012/14/89-I.R.(Misc.) dated the 22nd March, 1990.

SCHEDULE

“Whether the action of the management of Indian Airlines, Patna in terminating the services of Shri Gouri Shankar Singh, ex-Casual Loader w.e.f. 5-10-88 is justified ? If not, what relief is the workman entitled to ?”

2. The workman has appeared and filed W.S. stating therein that M/s. Indian Airlines Corporation which is a Govt. company is a “State” and that the Central Govt. is the appropriate authority to make reference under Section 2(a)(i) of the I.D. Act, 1947 and he was employed in a permanent nature of job throughout the year and he worked under the supervision and control of the management company. An unfair labour practice was adopted by the management and he was employed as badlies, casuals and temporaries and as such for the years with the object of depriving the status and privileges of permanent workman. It is said that he was working with the management since 29-9-79 and was working as loader to load and unload of the cargoes during the transit and stoppage of the Airplane at the Patna Airport. He was also employed as and when required as Tractor Operator to keep the Airport ready for use and cleaning bushes and he was also engaged in the engineering division of the Indian Airlines Corporation at Patna Airport. It is said that he and other loaders were employed in rotation to do different nature of job either as badli or casuals or temporaries so that they may not attain the status of permanent workman and he was working

through the year since his employment from 29-9-79 and completed more than 240 days in each calendar year inspite of some interruptions here and there. Wages paid to him varied from time to time as per nature of job.

3. It is further said that the workman was asked by the official of the Station to work in the residence and on its refusal he was threatened that he would not be provided employment. It is stated further that an I.D. Card was also issued to the workman. It is further said that the employer used to employ other outsiders as casual loaders ignoring the claim of the concerned workman. It is said that he was stopped work by the management illegally and arbitrarily and unjustified with effect from 1-10-89 and it is said that he was terminated without compliance of the provision of Section 25-F of the I.D. Act and after his termination the workman raised an industrial dispute before the ALC(C), Patna under Section 2A of the I.D. Act and on failure of the conciliation proceeding the matter was sent to the Ministry of Labour resulting reference to this Tribunal. It is said that an Award be passed accordingly for reinstatement of the workman with full back wages as he has been victimised by the employer by way of unfair labour practice and the action being totally unjustified.

4. The management has appeared and filed W.S. stating inter alia that this reference is not maintainable under Section 2(k) of the I.D. Act, 1947. It is further said that the management operates various flights to and from Patna Airport and it is not always possible to adhere strict time schedule of the operation and there is also time variation in the schedule of the flight due to certain extraneous factors such as weather, temperature and availability of Aircrafts and causing delay and disruption of these factors at some times activities of the work in the Airport increase than the normal work load and for that loading/off loading and cleaning of the Aircraft though a regular nature of job does not remain a job of perennial nature because of work loads which varies from time to time and compelling circumstances. As per work load for loading/off loading as also for cleaning of Aircraft the management used to employ part time/daily rated/casuals/badlies for lifting replacements and such casuals engagement is done for specific period within the knowledge of the person being hired as such.

5. It is also said that the alleged workman was engaged intermittently depending upon the work requirement and the concerned workman cannot claim as a matter of right to continue in the employment. A detailed chart of days engaged by the workman from the year 1985 to 1988 have been given showing that in none of the years under

consideration he has completed more than 240 days work in 12 calendar months and on the work engaged by him was a fraction of 240 days which does not make him any entitlement for regularisation of his job. It is also said that Indian Airlines is a Corporation established under Section 3 of the Air Corporation Act of the Parliament and the service rules relating to the terms and conditions of the staff and officers have been incorporated in three sub-sections namely (1) Indian Airlines (Flying Crew) Service Regulations, (2) Indian Airlines (Aircraft Engineering Department) Service Regulations and (3) Indian Airlines (Employees other than Flying Crew and Aircrafts Engineering Department) Services Regulations. It is also said that there are certain norms for recruitment of persons in case of any vacancy and the workman cannot claim his regularisation in service by raising an industrial dispute and as such it is said that the workman was neither issued with any appointment letter nor any termination letter and nor he has been terminated from the service of the management rather he himself stopped coming to job from 1-10-88 and the same cannot be said to be termination by the employer and as such he is not entitled for any notice or notice compensation under Section 25F of the I.D. Act, 1947.

6. By way of rejoinder to the W.S. of the workman a detailed parawise and specific rejoinder has been given by the management denying the contention of the workman specifically and the same is said to be incorrect and denied. It is also denied that the alleged workman has completed more than 240 days in any calendar year and it is further said that as per chart given by the management number of days engaged by the workman is very fraction of 240 days as claimed. It is also denied that any bonus was given to the workman for working more than 30 days in the accounting years. It is finally said that the workman is not entitled to any relief as claimed and the Award be passed accordingly.

7. A rejoinder has also been given by the workman to the W.S. of the management and the pleas taken by the management has been denied specifically and parawise comments have been given and the same is said to be incorrect and denied.

8. Now on the basis of the pleadings of the parties the points for consideration in this case are :—

- (a) Whether the action of the management of Indian Airlines Corporation, Patna is justified in terminating the services of Shri Gouri Shankar Singh, ex-Casual loader with effect from 5-10-88 ?
- (b) If not, what other relief or reliefs the workman is entitled to ?

9. Both the points are intel linked and are taken up together for their consideration.

10. The management has examined two witnesses—MW-1, R. Prasad, who joined as Traffic Officer in the year 1971 and was promoted as Assistant Commercial Manager in the year 1979 and was further promoted as Station Manager from October, 1990 and was posted at Patna before that from April, 1983 as Airport Manager. He knew the workman who was working as Casual Loader occasionally for doing the job of loading/off loading of baggages and cargoes. He has tried to support the case of the management as given in the W.S. and the rejoinder. He has further stated that when abnormal situation exists and in the normal circumstances when the Airport remain busy the services of the casual labours are required for 1½ of the day to 4 hours and the management pays 1½ of the days wages fixed for the casual worker. He has also stated that the casuals are fully aware of the conditions of their service and they have no right to claim permanent employment under the management of Indian Airlines Corporation. The Airport being the prohibited area temporary permits for duration of 3 months in issued to the casual workers also and their photos are affixed in the photo but issuance of such permit does not indicate that any casual worker worked in the Airport for the duration of 3 months. He has also admitted that the Airport have tractors and the permanent loaders and operators operate the tractor and in absence of the permanent tractor operators the casual loaders are engaged to operate the tractors. He had denied that the workman was directed to work in the house of the Station Manager and further denied that when he declined to do so he was from work. He had also denied that the management stopped the work of the workman from 5-10-88 rather he did not report for duty. He denied that the workman has completed more than 240 days of work in each year. There is no attendance register maintained for the casual worker and for the casual loaders. Their attendance is recorded on slips and payment of wages are made through vouchers and from the vouchers it would appear that how many days a casual is put for a particular year. He has proved some payment voucher marked Ext. M-1 which were prepared on the basis of the certificate issued by the Airport Manager and these certificates are part of the vouchers. These vouchers bear the signature of the workman and the date of engagement would be clear from these payment vouchers. It is also denied that sometime the concerned workman was engaged in the name of Lal Babu and the management paid him wages in different names and no such complaint was made ever by the workman.

11. However, in the cross-examination he had admitted that as he was posted at Patna Airport from 1983 he can admit that the workman was

working in Patna Airport since that time and from his colleague he took note of the fact that he was working from before 1983 but he could not say that the workman was working from September, 1979. He has also stated that some V.I.P. Aircraft also come to the Patna Airport but number of such aircraft is very few. He could not say that in the year 1985 seven aircrafts used to come and depart from Patna Airport and such arrival and departure is recorded in the Airport Log Book. He has further admitted that the documents produced by the management are not prior to 5-10-88 and he could not say as to how many aircrafts came in Patna Airport from 1979 till 5-10-88 every month and has further said that he could not produce details of flight during the period as these records are not available and what records were available have been produced. He has denied that the management has deliberately refrained to produce the records prior to 5-10-88 with a view to defeat the claim of the workman and further he admitted that the flights schedule are delayed due to technical snags, high temperature and bird hits. He has further admitted that for lifting the luggage and cargoes a work force is required which is provided by the Indian Airlines Corporation but he had denied that for such work of loading the management employed the casual and the concerned workman regularly. However he has admitted that such a dispute of like nature is pending in CGIT No. 2 at Dhanbad. He has also stated that the management has produced the document in support its contention in respect of the concerned workman for the period as available in the record. He has also admitted that the concerned workman used to perform the job of driver of the tractor occasionally.

12. He has further stated that as many as 17 or 18 porters were working in the Airport from 1979 to 1988. He has further denied that the concerned workman and other casual workmen were to remain in duty while the flights were coming in and going out but they were required to attend the duties on certain hours either 1½ day or full day. He has admitted that Ext. M-1/25 does not indicate the year to which it relates. He has further admitted that the attendance of the casuals were recorded in the blank paper but denied that the work taken from the concerned workman in the name of Lal Babu. The management also did not dismiss the concerned workman, therefore, the question of issuance of dismissal to him does not arise and no re-employment compensation was paid to the concerned workman and they are not required to pay as such as per law. He has further denied that the concerned workman has put in more than 240 days work in each calendar year. He had denied that he is adducing falsely.

13. MW-2 Ramesh Chandra Kundu is working as Account's Assistant since 1973 and was promoted as Accounts Officer in the year 1986 and

all along he worked at Calcutta and he was never posted at Patna Airport. He has deposed that Calcutta is the Regional Headquarters of the Eastern Zone covering West Bengal, Bihar, Orissa, Assam, Nagaland Andaman and Nicobar Islands and Patna is one of the Airport of Eastern Zone. He has further admitted that casual labours are engaged at various Airport and payments are made from petty cash floats processed through petty cash vouchers and reimbursement is made on presentation of bill after every fortnight supported by petty cash vouchers and ancillary document and Patna out station has the same system of reimbursement. He has further stated that they have filed relevant vouchers of the concerned workman and has further filed photo copy of the statement prepared by Calcutta Office regarding the attendance put by the concerned workman from 14-3-85 to 13-9-88 under the signature of Shri D. D. Kisku marked Ext. M-2. He has further stated that there is prescribed time limit for preservation of petty cash vouchers which is 5 years. Thereafter such documents are weeded out and the rule of preservation of vouchers are containing in circular issued by the Sr. Dy. Finance Manager in the year 1984 and photo copy of Circular has been produced and marked Ext. M-3. He has also stated that the vouchers are maintained yearwise and by way of weeding out of all vouchers they are sold to outsiders, and about Ext. M-1/25 he has stated that it is a supported document of Ext. M-1/24.

14. However, he could not say the condition of employment of the concerned workman at Patna Airport nor could he say from when he started working there. Cash Book is maintained at Calcutta and at Patna petty cash book is maintained. He could not say as to whether Cash Book has been produced or not. The sale proceeds of petty cash vouchers are entered in the cash book of Calcutta Office but the said Cash Book has not been produced and the process of weeding was done in his presence and no record of certificate is given for weeding out for voucher is maintained. He could not say that the concerned workman worked since 1979 at Patna Airport nor he could say that any workman working for more than 30 days for a year is entitled for bonus. No payment was made to the concerned workman in his presence as he was posted in Calcutta. He could say that the Sr. Dy. Finance Manager was the authority for issuance of circular prescribing time limit to weed out the record and has denied that he is adducing falsely.

15. The concerned workman Shri Gouri Shankar Singh has been examined as WW-1 and has supported his case as given in the W.S. and the rejoinder. He has further stated that he has to report at the Airport daily at 8.00 A.M. and he left from duty at 3 or 4 P.M. and his attendance was marked in the exercise book. He has to do loading and unloading of cargoes of passengers luggage and earlier payment was made to him @ Rs. 12.50 per day later it was raised to

Rs. 43 per day and in every calendar year from 1979 to 1988 he had worked for more than 240 days but not any attendance paper was given to him but he has kept his attendance marked in a copy from 1982 to 1983 and this is the original note of attendance which was produced before the ALC(C) Patna and photo copy of which was marked as Ext. W-1 and temporary permit was given to him by the Airport authority and marked Ext. W-2 series and the permit issued during the curfew marked Ext. W-3. He has also stated that in coming or out going of aircrafts are recorded in the log book which indicates arrival and departure of such aircrafts, and the airport has its booking office at Patna town, and the working hours of City Office was from 7-00 A.M. till the departure of all the aircraft till 1985 and after 1985 it was changed from 10.00 A.M. to 4 P.M. He has further stated that at Patna Airport work was done in two shifts and in both the shifts he had worked during the long period of engagement by the workman. He has further stated that at time of terminating his services, the management did not give any notice or notice compensation and the management adopted a style of its own by recording the attendance of its casuals. A copy of attendance produced before the ALC(C) is marked Ext. W-4 and as per Ext. M-2 the management used to direct him to work for their officer to which he declined and a reference of like nature is pending before the CGIT No. 2, Dhanbad. He has prayed for reinstatement with full back wages. In the cross-examination he has stated that he has read upto Class IX and he has got certificate to this effect but he could not read English fluently. His father was in the service of the airport Patna who retired on 1-1-92 and all the facts about his case he has disclosed to his lawyer at the time of drafting of W.S. and the same facts were also given before the ALC(C) Patna.

16. He has been cross-examined on three different dates in lengthy way and has stated that he has submitted more than 200 documents for the period from 1979 to 1988 but copies of these documents have not been brought in this Tribunal. He had denied suggestion that there was requirement of keeping the daily attendance by the management in exercise book and he has further stated that from the last 2 or 3 years the attendance used to be kept on plain paper showing the date of attendance and the period of engagement and earlier it was kept in an exercise book. The Duty Officer of the Airport used to certify his attendance on the basis of which wages were paid to them and vouchers for payment were prepared on the basis of the certificate of the Duty Officer. He has proved the certificate given by the Duty Officer attached to Ext. M-1 series which is upto M-1/30 on which voucher payment was also made. He has further stated that payments also used to be made on vouchers and on white paper and endorsement was also made by the office on the white paper. He has further stated that Indian Airlines Corporation is also an organisation and the vouchers disclosed the rate of payment made to them. He has kept notes of his attendance for the last 4 to 5 years and those notes have been filed in this Tribunal.

17. He has further stated that he cannot produce any document to show that he was working since 1979 and prior to 1983 no document was provided by the management and from the year 1983 they were given identity card by the management and he has filed the photo copy of the same on which his photo was affixed. He has denied that maximum of 30 minutes time was allotted for loading of luggage and cargo into the aircraft and when the quantity of such luggage are larger, then even one hour or 1.30 hours are allowed for loading. He has also denied that for loading and unloading work maximum 4 to 5 porters are required. He has also denied that the casual labourers were engaged only when need arose or when simultaneously two aeroplanes landed and has further denied that 7/8 flights did not cross Patna Airport in a day. He has further stated that he worked continuously for full day which was written by him on one day and he used to write his attendance separately in a copy which is filed and marked as Ext. W-1. He has further denied that the duty hours were not from 8.00 A.M. to 3 to 4 P.M. everyday, and also denied that the attendance was marked on loose sheets and they were paid according to that. He has further denied that he was never asked to work in the residence of the officer and has further added that it was the reason for his refusal he was stopped to work as new boys were ready to work in the residence of the officer and he has filed application to this regard which is on record. He has also denied that from 5-10-88 he has stopped reporting from duty as he was not getting work daily. He has further denied that every year he had not worked 240/250 days in a calendar year. He has also denied that if job of casual porter is offered to him by the management he would accept that. There is no other witness on behalf of the workmen.

18. Some documents have been filed on behalf of the management which are photo copies of vouchers marked Ext. M-1 to M-1/35, Ext. M-2 is the photo copy of engagement chart of the workman in four sheets, Ext. M-3 is the statement of destruction of old records, Ext. M-4 is the photo copy of the Gazette of India dt. 25th November, 1961 being the advertisement and notices given by the Indian Airlines Corporation, Ext. M-5 is the Indian Airlines Employees Service Regulation and Ext. M-6 is the photo copy of recruitment and promotion Rules of the Indian Airlines Corporation.

19. Similarly some documents have also been filed by the workmen which are Ext. W-1, photo copy of notes of attendance of the workman from the year 1982 upto 1983 December, Ext. W-2 series are the photo copies of temporary permits with photograph of the concerned workman affixed therein, Ext. W-3 is the curfew pass issued by the D.M. Patna and Ext. W-4 series are the attendance statement of the concerned workman from April, 1987 to September, 1989 given by the management.

20. While arguing the case it has been submitted on behalf of the management in their written argument that this reference is not maintainable under Section 2(k) of the I. D. Act as the workman was not a dismissal or terminated workman and as per reference the workman has been designated as ex-

casual workman as such there is no scope for consideration of his claim for regularisation on the contention that he became a permanent employee or that he was retrenched in violation of Section 25-F of the I. D. Act. It was also said that as he was an ex-casual loader so there is no question for the management to terminate his services and the workman himself has stopped from coming from 5-10-1988 and so he himself terminated his service. That being the case the reference suffers from a number of infirmities.

21. It has also been pointed out that it has come in the evidence of MW-1 that at Patna airport there are 17 to 18 casual loaders and they are given work on rotation and so the workman have not worked for more than 240 days regularly in 12 calendar month in a year and there is no question of violation of Section 25-F of the I. D. Act, 1947 as he was not retrenched by the management and no retrenchment letter was given to him rather he stopped coming from 1-10-88 whereas as per contents of the reference his termination as ex-loader is 5-10-88 and being the ex-loader he is not entitled for any such claim. It is also pointed out that the workman has claimed that he was working from the year 1979 in support of which no documentary evidence has been adduced and Ext. W-1 which has been filed for the year 1982-83 is based on separate notesheets of his attendance and those notes sheets have not been produced, hence this cannot be relied upon. It is also not clear that when he completed 240 days or more working days in 1982-83 and why he did not raise the dispute in time and waited for such a long time. It has further pointed out that as per MW-1 the workman was employed for 1/2 day or one as and when required and the attendance was marked and on the basis of the report of the Port Manager payment through vouchers were made for which Ext. M-1 to M-1/34 has been filed which has been admitted even by the workman in his evidence. This fact also finds support from Ext. M-2 which is Attendance Chart of the workman for the year 1985 to 1988 and this was not challenged by the workman.

22. It is further pointed out that it has been contended that some documents were called for from the management but they were not produced by it. So an adverse inference has to be drawn against the management which will go in favour of the workman. MW-2 in his deposition has stated that after preservation for a period of 5 years such vouchers and list of attendance are weeded out as per company's rules and so these documents, as called for by the workmen were not available with the management and in reply of the requisition it was asked by the management to give details of the documents and its relevancy which were not given and this fact was not supported with affidavit as held by Hon'ble Patna High Court in the case of Kamalapati Ram and Co. versus workmen in Mica Industry reported in 1968-1-LLJ 702 (DB) and for that no adverse inference should be drawn against the management. It is further submitted that casual workers are not entitled for reinstatement as held by the Hon'ble High Court, Madras in the case of Crompton Engineering Co. Pvt. Ltd. vs. Labour Court, Madras and Ors. reported in 1975-1-LLJ 207. It was also pointed that

the management or the company being the organisation of the Central Government there is well settled procedure for appointment for which Ext. M-6 has been filed showing recruitment and promotion rules and the workman cannot claim such regularisation of service through back door method and in the ratio Air India's case as held by the Hon'ble Supreme would not be applicable in this case.

23. It is further said that the ruling relied upon by the workman in case of Digwadih Colliery vs. Their workmen reported in 1965-2 L.J. 118 Supreme Court would not apply in this case as for the case of reinstatement and regularisation of workman he has to show that he has completed one year of continuous service in permanent nature and that he was so employed for a period of not less than 12 calendar months but both these conditions have not been satisfied by the workman and in this case he could show nothing that he worked for more than 240 days continuously for 12 calendar months with the management and as such he was not entitled for his reinstatement and regularisation.

24. It is further said that a workman cannot be taken on its roll by the management against non-existing post and the Court can direct for such employment by creating a new post and that authorities relied upon by the management are (1) Satvanarayan Sharma and Ors. vs. National Mineral Development Corporation Ltd. reported in 1990 Lab. I.C. 1652 and Catering Cleaners of Southern Railway vs. Chief Commercial Supt. Southern Rly. reported in 1990 Lab. I.C. 1936. It is said that as per ratio drawn from the above noted authorities of the Hon'ble Supreme Court such a workman cannot be regularised or reinstated in service by the management by creating a new post in absence of having such vacancies. It is also submitted that the management has got its regular work force as loader and casual loaders are required to be employed as and when required due to clash of flights and unexpected delay in flight coming and going out and rash of passengers and cargoes simultaneously which is for a very short period and such occasion did not arise on daily routine basis.

25. It was also pointed out that the workman has taken a wrong plea that vide Ext. M-1/18 and M-1/25 on the vouchers no year has been mentioned and it cannot be said as to when the workman was employed and for which payment was made. Further it is submitted that Ext. M-1/18 should be read with Ext. M-1/17 and Ext. M-1/25 be read with Ext. M-1/24 which bears dates and years as 22-1-88 and 18-4-88. There is no ambiguity or discrepancy in the exts of the management. It is also submitted that MW-1 has specifically denied that the concerned workman was asked to work in the residence of the officer and was threatened on his refusal for his stoppage of work and this plea has been taken by the workman falsely just to make out a case in his favour. It is further pointed out the plea of the workman that the action of the management is unfair labour practice under Item 10 of the 5th Schedule of the I.D. Act, 1947. It is submitted that this provision refers to employ workmen as badlis/termoraries/casuals and to continue them as such for years with the object of depriving them of the status and the privileges of permanent workman and this provision relates to the case where there is regular work of continuous and perennial nature and here the workman was engaged as badlis/termoraries and this is not the case of the management as it has got its permanent strength of loaders/porters and casuals who are engaged occasionally. It is also pointed out that on few occasion workman was asked to drive tractor hauling the trolleys for which he was paid higher wages at par with the wages of permanent tractor driver. So there was no question of depriving the workman from getting due wages to him. It is also submitted that in the ext. of his counter-plea, MW-1 has admitted that if he is offered job of casual porter from the management he is ready to accept. In view of the admission and willingness of the workman there is no question of reinstatement and regularisation in service as permanent workman. It is also pointed out that after such evidence given by the concerned workman on 02.04.88 he was directed to come to work as a casual porter through his father but he did not turn up for the reason best known to him. Finally it is said that there is no merit in the case of the workman and the plea taken by him

is totally false, baseless and the action of the management in so-called termination of the ex-workman was quite justified and proper and an Award be passed accordingly.

26. On the other hand it has been submitted on behalf of the workman that he was working with the management as porter/loader since 29-9-79 but he was illegally arbitrarily terminated from service from 5-10-88 without complying with the provision of Section 25F of the I.D. Act, 1947 and he has completed more than 240 days of continuous service in 12 calendar months for years together but the management did not regularise his service nor he was paid full wages as given to permanent workman and when he demanded the same and also refused to work in the residence of the officer of the management he was threatened for stoppage of work and refusal from further employment and finally he was terminated from service from 5-10-88. In this connection it is said that the workman has filed Ext. W-1 series and from which it is clear that he has completed more than 240 days of continuous job with the management in 12 calendar months for years together and in view of the authority of the Hon'ble Supreme Court in the case of H.D. versus Reserve Bank of India reported in 1985 Lab. I.C. page 1733. The workman has produced his attendance sheets for the year 1982-83 to support the fact of his continuous engagement for more than 240 days in these two years and 12 calendar months. It is also submitted that the attendance of the workman has been given in Ext. W-1 which could have been verified from the Attendance Register, Pay Sheet, Flight Register, Vouchers, Cash Book and other registers maintained by the management and these documents were called for by the workman. But none of the documents have been produced except Ext. M-1 series which are vouchers for the year 1986 to 1988 whereas it is admitted case of the workman and as per evidence of MW-1 that he has been seen working at the Airport by this witness of the management since the year 1983 and he knew through his colleague that he is working prior to 1983. Now it is an admitted position that he has worked for such a long period prior to 5-10-88 when he was illegally terminated and these facts could have been verified very well from the documents called for by the workman but these were not produced and flimsy ground was taken by the management that all the details were mentioned by the workman and a new plea has been taken in the argument of the management that as per decision of the Hon'ble Patna High Court the workman ought to have been given such requisition with affidavit but never such plea was taken by the management during the pendency of the case and certainly an adverse inference should be drawn against the management for its failure to produce the relevant documents which in its custody to substantiate the case of the workman. It was also submitted that a plea has been taken that such petty cash vouchers or loose attendance sheets etc. are destroyed after 5 years and it is also true that the workman was terminated from service in October, 1988 and the dispute was raised before the ALC(C), Patna in 1989 in which the management has appeared and contested in the conciliation proceeding and in such direction steps ought to have been taken by the management to preserve the documents concerning the workman which is likely to be called for in the proceeding or in the reference. But no such step has been taken by the management. It is pointed out that a dispute before the ALC(C), Patna was raised in the year 1989 and in this view of the matter, vouchers from 1984 onwards ought to have been produced by the management but Ext. M-1 series are from the year 1986 onwards. So, the plea of the management falls on the ground that such documents are weeded out after expiry of five years.

27. It is further pointed that MW-2, an Officer of the Accounts Section of Calcutta Headquarters Office of the Eastern Region of the management has categorically stated that Petty Cash Book is maintained at Patna and Cash Book is maintained in the office of the headquarters, Calcutta where payments are made from petty cash vouchers and are entered into the Cash Book. Certainly, Cash Book is a document to be preserved permanently but MW-2 has categorically stated that no such Cash Book has been produced and that no such document was produced by the management. In this view of the matter it is pointed out that the documents which were available with the management have not been produced deliberately just to defeat the claim of the workman and for that matter certainly adverse inference should be drawn against the management.

28. After considering all the points and counter points raised by the parties I find much force in the plea of the management that the management has not produced some called for documents, certainly which were in its possession as admitted by MW-2 and it goes to substantiate the contention of the workman that these were withheld deliberately by the management to defeat the claim of the workman and it is an admitted position that the workman was working with the management prior to the year 1983 and from Ext. W-1 which cannot be disbelieved and in absence of the original documents not produced by the management he would have completed more than 240 days of continuous service with the management in 12 calendar months for years together.

29. So far the plea of the management that if the workman has completed much more than 240 days in 1982-83 why he did not raise the dispute. It is pointed out that at the time the workman was being engaged by the management and on the verbal assurance of the authorities to get his work regularised he was working with the management continuously till the year 1988 when he was terminated arbitrarily and illegally on his refusal to work at the residence of the officers and also for the claim of regularisation and payment of equal wages as given to regular workman. It is also pointed out that from Exts. W-2 and W-3 it is clear that the workman was working regularly with the management and from Ext. W-4 which is attendance sheet for the year 1987-88 given by the workman it is clear that he has worked with the management regularly and this chart has been issued by the management showing his attendance upto 30-9-88. It is not denied by the management in the evidence or in the W.S. that he has not worked till 1-10/5-10-88 as claimed by the workman and simple plea has been taken by the management that he left the work at his own from 1-10-88 and did not turn up thereafter and so there is no question of his termination from service.

30. It is further pointed out on behalf of the workman that from the I.D. Card issued to the workman as per Ext. W-2 it is clear that he was working there and so far the vouchers filed by the management is concerned that in the vouchers Ext. M-1/2, M-1/3 and M-1/25 no year has been mentioned. It is also submitted that as per Ext. M-1/29/27 the workman has been shown 13 days whereas he is reported to have worked for 8 days and similarly in November, 1986 he is reported to have worked for 2 days but in Ext. M-1/8 he has been paid for four days. Similarly in March, 1988 he is reported to have worked for 5 days but in Ext. M-1/11 he has been shown to have worked for 8 days. Thus the vouchers Ext. M-1 series are not true attendance chart of the workman and this cannot be relied upon. It is further pointed out that as per authority of the Hon'ble Supreme Court in the case of Digwadih Colliery of Tisco.—versus—Their workman reported in S.C.L.J. Vol. 4 page 2449 which went to the Apex Court from this Tribunal, it has been held by Their Lordships that even if a workman worked in different categories as badlies, temporaries or casuals and if he completes 240 days, he is entitled to protection under Section 25F of the I.D. Act and if his service is being terminated otherwise it is illegal retrenchment and the workman is entitled for reinstatement with full back wages. It was also pointed that as per judgement of the Delhi High Court, D. B. in the case of Air India-vers-Union of India reported in 1991 Lab. I.C. page 451 it has been held by the Hon'ble Judges that Air Corporation Act under which these Indian Air Lines and the AIR India are operated cannot be regarded as obliterating the applicability of the Standing Orders and the I.D. Act which has been

also confirmed in appeal by the Hon'ble Supreme Court in the case of AIR India-versus-Union of India reported in 1995 Supreme Court cases-1152-1995 (71) F.L.R. 1152. Accordingly it is submitted that from the exhibits produced by the workman and as per admission of MW-1 it is clear that the workman have worked for years together from 1979 to 1988 October with the management and have completed more than 240 days of work in 12 calendar months for years or so and his retrenchment by the management from 5-10-88 is arbitrary, illegal and unjustified violating the provision of Section 25 of the I.D. Act and as such he was certainly entitled for reinstatement with full back wages.

31. So far the pleas taken by the management that the workman has admitted that he is willing to do the work of casual porter if offered by the management is concerned it is pointed "that the beggar cannot be a chooser". It is submitted that a workman who is idle for years together due to illegal and arbitrary action of the management have to take support of something which is available and for that the workman has stated that even if the work of casual porter is given he is ready to do the same but this does not mean that he is deprived of his legitimate claim of reinstatement with full back wages which he has become entitled due to arbitrary and illegal act of the management by termination without notice or notice compensation with effect from 5-10-88 and that liability of the management cannot be taken off.

32. I find much force in this plea taken by the workman and that the contention of the management that no adverse inference should be drawn against the management for non-production of documents by the management and the workman has failed to prove that he has worked for more than 240 days in 12 calendar months is concerned, this is not tenable in view of the documents produced by the workman and also by the admission of MW-1 and MW-2. It is very clear that he was terminated arbitrarily and illegally with effect from 5-10-88 and this action of the management cannot be justified in any way as it has been done violating the provision of Section 25F of the I.D. Act whereas the workman has worked for so many years and completed many more 240 days regular service with the management and the documents produced by the management in support its case cannot be relied upon for non-production of other documents which are otherwise available with the management which were called for the management as per evidence of MW-1 and MW-2 and this is the deliberate action of the management and certainly for that there is nothing to disbelieve the contention of the workman about his continuous work for many 240 days in 12 calendar months with the management. Accordingly he becomes entitled of his reinstatement and regularisation in service as porter/loader with effect from 5-10-88.

33. So far payment of back wages is concerned, it is true that the workman has become idle for illegal and arbitrary action of the management for so many years but in view of the principle of no work and no pay, the management is directed to pay at least 30 percent of full back wages for his idle period. Accordingly both the points are decided in favour of the workman and against the management. Hence, the following Award is rendered :—

"The action of the management of Indian Airlines, Patna in terminating the services of Shri Gour Shankar Singh, ex-Casual Loader w.e.f. 5-10-88 is not justified. Consequently, the concerned workman is entitled for reinstatement and regularisation as Porter/Loader with 30 percent full back wages with effect from 5-10-88."

The management is directed to reinstate and regularise the concerned workman with payment of 30 percent full back wages with effect from 5-10-88 within two months from the date of publication of this Award in the Gazette of India.

34. However, there will be no order as to costs.

T. PRASAD, Presiding Officer

नई दिल्ली, 10 जुलाई, 1997

का.भा. 1967.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में इंडियन एयरलाइन्स के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-7-97 को प्राप्त हुआ था।

[संख्या एल-11012/2/83-डी. II(B)/आई.आर. (सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 10th July, 1997

S.O. 1967.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Airlines and their workmen, which was received by the Central Government on 9-7-97.

No. L-11012/2/83-D.II(B)/IR(C-I)

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA,
PRESIDING OFFICER, CENTRAL
GOVT. INDUSTRIAL TRIBUNAL, NEW
DELHI

I.D. No. 24/84

In the matter of dispute :

BETWEEN

Shri S. K. Ahluwalia S/o Shri R. D. Ahluwalia,
Aged about 37 years, resident of 40-B,
Jia Sarai, 1st Floor, (near I.I.T. Gate).
New Delhi-16.

Versus

The Management of M/s. Indian Airlines,
Thapar House, Janpath, New Delhi.

APPEARANCES :

Shri T. M. Nagarajan—for the workmen.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012(2)/83-D.II(B), dated 5-3-1984 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the Management of Indian Airlines, Delhi Region in dismissing Shri S. K. Ahluwalia, Senior Traffic Assistant with effect from 8-6-1982 is justified ? If not, to what relief is the workman concerned entitled ?"

2. The Management has submitted a report that the workman has since died and none of his representative has come on record as he has left no legal heir. In view of this situation no dispute award is given in this case as the cause of action does not survive. Parties are left to bear their own costs.

Dated : 8th May, 1997

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 11 जुलाई, 1997

का. 1968.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एयरलाइन्स के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-7-97 को प्राप्त हुआ था।

[सं. एल-20030/2/95-आई.आर. (सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 11th July, 1997

S.O. 1968.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Airlines and their workmen, which was received by the Central Government on 10-7-1997.

[No. L-20030/2/95-IR (C-1)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA,
PRESIDING OFFICER, CENTRAL
GOVT. INDUSTRIAL TRIBUNAL, NEW
DELHI

I.D. No. 18/96

In the matter of dispute :

BETWEEN

Shri Sameer Khanna,
Sector D/671, Mandir Marg,
Gole Market,
New Delhi.

Versus -

Assistant Personal Manager (E),
Director of Personnel,
Indian Airlines,
Airlines House,
New Delhi-1.

APPEARANCES :

Shri S. L. Hans—for the workman

Shri Dhanesh Srivastava—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-20030/2/95-I.R. (Coal-I), dated 16-2-96 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the action of the Management of Indian Airlines in terminating the services of Shri Sameer Khanna. Casual Typist w.e.f. 13-3-92 is justified ? If not, to what relief the workman concerned is entitled ?”

2. The representative for the workman Shri S. L. Hans made statement that the Management had offered appointment letter dated 30-1-97 to the workman who has joined his duties on 3-2-97, the reference has thus become infructuous. In view of this situation no dispute award is given in this case leaving the parties to bear their own costs.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 15 जुलाई, 1997

का.आ.1969 औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में एयर इंडिया लि. के प्रबन्धनत्व के संबंध में नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं.-2) मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-7-97 को प्राप्त हुआ था।

[सं. एन-20030/3/95-आईआर(सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 15th July, 1997.

S.O. 1969.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2), Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Air India Ltd., and their workmen, which was received by the Central Government on 14-7-1997.

[No. L-20030/2/95-IR (C-1)]
BRAJ MOHAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

REFERENCE NO. CGIT-2/12 OF 1996.

EMPLOYERS IN RELATION TO THE MANAGEMENT OF AIR INDIA LIMITED

AND

THEIR WORKMEN.

APPEARANCE :

For the Employer : Mr. Abhay Kulkarni and Mrs. Pooja Kulkarni Advocates.

For the Workmen : M/s. Kumar N. Samant Advocates.

Mumbai, dated 27th June, 1997.

A W A R D

The Government of India, Ministry of Labour by its Order No. L-20030/3/95-IR (Coal-I), dated 29-1-1996 had referred to the following Industrial Dispute for adjudication.—

“Whether the action of the Air India Ltd, Bombay in imposing the punishment of reduction in rank from the position of Senior Cashier to Senior clerk on Mr. Thomas Kattapuram, A/C Department, w.e.f. 15-7-1991 is legal and justified ? If not, to what relief the concerned workman is entitled ?”

2. Thomas Kattapuram, the workman pleaded that he resides at Air India staff quarters, 2nd, Kalina Santacruz, Bombay. He joined the service as a junior clerk in 1965 and was promoted later on. When the dispute arose he was a senior cashier

3. Air India employees guild is a recognised union operating in the company, representing the employees. In the year 1989 there was a general resentment among employees of the first party company, in view of Memorandum of Settlement being signed by the office bearers of the guild and the management of the first party company. It is averred that, that Memorandum of Understanding was

for certain personal gain of some of the office bearers. The MOU was opposed, by some others. It is therefore they were expelled. Thereafter the member of the guild formed an ad hoc committee to fight the sold out office bearers to the management. It distributed notices dated 1-8-1989 to 18-8-1989 calling upon employees of the party company to fight a group of office bearers of the guild and the management. It opposed the management decision of deducting 3% directly from the arrears to be paid to the employees as unions contribution. The workman was one of the conveyor and committee member of the ad-hoc committee formed in the year 1989 of the Air India Employees Guild. They filed a writ petition in the High Court for the alleged deduction and got the relief.

4. The workman pleaded the Ad-hoc committee called upon the workers to be on work to rule on 21-8-1989 by their notices. On 21-8-1989 the workman was on duty at cash counter. It is averred that from 10.30 a.m. to 10.40 a.m. its official tea break for the employees of Air India, who are on general shift of the company.

5. The worker pleaded that on that date he stopped the work for fifteen minutes for tea break. At about 10.30 Mr. Sidhwa, Dy. Director Finance, Mr. V. K. Sharma Sr. Accounts officer, and Mr. R. J. Moses, Accounts officer approached him and inquired why he stopped the work. The worker in turn showed them the notices and informed further that he is availing tea break. Therefore, he has stopped the work for 15 minutes. After that talk the workman went to the canteen to fetch a cup of coffee and returned within about three minutes. It is averred that at that time Ambike, the Assistant Accounts Officer was in the cash counter and was assigning the work of the worker to one Mr. Wani Senior clerk. After entering the section the worker in a polite and normal tone asked Wani to leave his place of work so that he could continue to do the work in hand.

6. On 28-8-1989 the worker was given a letter transferring him to cargo complex w.e.f. 23-8-1989. He reported to the complex at 9.30 a.m. he was not assigned any duty by Mr. Dhound Assistant Manager Finance or Gonsalves Assistant Accounts Manager Cargo complex. At 4.30 p.m. Dhound called the worker and instructed him to take over job of petty cash account from Mts. Purohit from 25-8-89. The workman then applied for leave of that day which was granted.

7. On 24th August, 1989 the workman received a telegram levelling some untrue and vague allegations against him and he was called upon to give his say. He replied the same on 29-9-1989 denying all the allegations. On 18-9-1989 the worker was served with a chargesheet by Dy. Director Finance. He submitted his explanation. The charge-sheet which was gramed was under the Air-India Employees service regulations. Thereafter a domestic inquiry was held against him.

8. The worker pleaded that initially a charge-sheet was issued under Air-India employees service regulations and later on it was converted under the Mo-

del Standing Orders regulations which seriously afflicted his defence. It is pleaded that he was not given sufficient opportunity to represent the case. It is averred that material questions put by him were not allowed and the witnesses he wanted to be recalled was not allowed to be called. It is averred that the material witnesses Kanchan was not examined by the management. It is submitted that the subsistence allowance was not paid to him as per the rules. On all these grounds it is submitted that the inquiry which was held against him is against the Principles of Natural Justice.

9. The worker pleaded that the enquiry officer had given his report which is not on the basis of the evidence before him and his findings are pervers. It is contended that the disciplinary authority had imposed the punishment which is disproportionate to the charges prove. He therefore prayed for setting aside the order for monetary benefit as if the order was not passed with other reliefs.

10. The management resisted the claim by the written statement Exhibit-5. It is averred that the ad-hoc committee is not registered body and therefore has no locus standi to espouse the cause of the workman concerned here in and the alleged cause of action is not the Industrial Dispute within section 2-K of the Industrial Disputes Act of 1947. It is submitted that the alleged cause of action pertains of punishment at an individual employees and on this ground alone the Tribunal may please to reject the reference as not maintainable.

11. The management pleaded that the enquiry which was held against the worker was as per the Principles of Natural Justice and nor prejudice was caused to him. It is denied that the findings of the inquiry officer are perverse and not based on the evidence before him. It is asserted that the punishment which was imposed on the workman is not disproportionate to the charges proved. It is submitted that the action of the workman was willful subordination, willful disobedience of lawful and reasonable orders of the superiors, his acts were subversive of discipline and good behaviour and he was behaving indecently in the premises of the corporation. It is submitted that under such circumstances the workman is not entitled to any of the reliefs as claimed and the reference may be answered accordingly.

12. The issues are framed at Exhibit-7. The issues 1 to 3 are treated as preliminary issues. The issues and my findings there on are as follows :

Issues	Findings.
1. Whether the domestic inquiry which was held against the workman was against the Principles of Natural Justice ?	No.
2. Whether the findings of the inquiry officer are not based on the evidence before it ?	No. Findings are correct.
3. Whether the reference is not maintainable under the law ?	Not Maintainable.

REASONS

13. The main objection on behalf of the management is that the dispute is an individual dispute and it is not espoused by the recognised union or that a group of employees. Under such circumstances it is not an Industrial Dispute under section 2-K of the Industrial Disputes Act of 1947.

14. It is not in dispute that the dispute referred to does not fall under Section 2(A) of the Industrial Disputes Act of 1947. That section deals with an Industrial dispute of any worker when he is discharged, dismissed, retrenched or terminated.

15. The statement of claim Exhibit-4 was filed by Thomas Kattapuram. He has verified the same. It is nowhere mentioned that it is filed on behalf of the Ad-hoc Committee of the members of the guild. Exhibit-2' is an initial Vakalatnama filed by Advocate Neerajan Shetty for Thomas Kattapuram. It has no reference to ad-hoc committee. Later on the advocate Mrs. Sawant filed Vakalatnama at Exhibit-10. It also does not speak anything in respect of Ad-hoc Committee of the guild. Thomas (Ex-12) in the cross-examination admits the position that it is not registered one. No resolution is passed by the Ad-hoc Committee that it is representative one. Further more, he deposed that he cannot say that whether the committee has any existence or not. He is not the office bearer of the committee but only an active member. On its basis it is to be seen whether atleast a group of employees have supported the workman or not. There is no evidence to that effect. Only a pleading in the claim that an ad-hoc committee was formed for a particular purpose is not sufficient to show that it has supported the case of the worker. No doubt that committee appears to have filed a writ petition in the High Court of Bombay and asked for some reliefs for the members of the guild. But that does not mean that committee has espoused the cause of the worker. There should be some evidence to that effect. It is not that the worker himself is an office bearer of the ad-hoc committee. If that could have been so it would have been said that the committee had decided to fight out the case of the worker and in that case it would have said that there is some support from the sizeable number of employees regarding the cause of the worker.

16. The learned advocate for the worker place reliance on different authorities to support her case. She placed reliance on Newspaper Limited and State Industrial Tribunal, 1960 II LLJ 37, Associated Cement Company and their workmen 1960 I LLJ 401, M/s. Tata Chemicals Limited Vs. Tata Chemicals AIR 1970 supreme Court 828. The ratio of these authorities is that once it is shown that a body of workman either acting through their union or otherwise sponsored workman's case it becomes an Industrial Dispute, that it is not necessary, that group should be registered one, that when a group of workman acting collectively represents the case of the workman becomes an Industrial Dispute. The Learned advocate for the management placed reliance on Rajasthan State Road Transport Corporation Vs. Krishnakanth 1995 II CLR 180. It is observed therein section 2-A covers only cases of dis-

charge, dismissal, retrenchment or termination otherwise of service of individual workman and not other matters which mean that—to give an example—if a workman is reduced in rank pursuant to a domestic enquiry, the dispute raised by him does not become an industrial dispute within the meaning of Section 2-A. However, if the union or body of workmen espouses his cause, it does become an Industrial Dispute. Here in this particular case for the reasons stated above it can be seen that the dispute was not espoused by the union or a body of workman. Hence it cannot be called as an Industrial Dispute as contemplated under section 2-K of the Act. Naturally the reference is not tenable.

17. For the sake of argument if it is said that reference is tenable I proceed to answer these main issues. From the inquiry proceedings it can be seen that initially the workman was not allowed to be represented by a representative of his choice. He thereafter preferred a writ in the High Court and later on he was allowed to be represented by a representative of his choice.

18. It is tried to argue on behalf of the workman that initially a charge-sheet was issued under Air India Employees service regulations. It was dated 18-9-1989 (Ex-8/2). Thereafter another charge-sheet was issued dated 27-9-1990 (Exhibit-8/4). After reading both these charge-sheet. It can be seen that there is no material difference in respect of the charges made against the worker. It can be seen that after the first charge-sheet was issued the deposition of Ambike was recorded on 10-9-1990. On 17-9-1990 the cross-examination was continued. On 26-9-1989 statement of R. R. Wani was recorded. Thereafter a second charge-sheet dated 27-9-90 was served upon the worker. Then the remaining witnesses were examined. Now it is to be seen what prejudice is caused to the worker by issuance of another charge-sheet that is under the Model standing orders for the same acts. Nothing is brought on record to show that the worker was prejudiced. It was given to him under abundant precaution as stated by the inquiry officer in paragraph-3 of his report which is at page 90 of Exhibit-8. No prejudice is caused to the worker, on its basis for coming to the conclusion the inquiry was against the Principles of Natural Justice.

19. It is tried to submit that relevant questions were disallowed by the enquiry officer which were put on behalf of the worker. After perusal of the inquiry proceedings which were produced alongwith Exhibit-5/6 I do not find any merit in this allegation. It is also submitted that transfer order was not produced on the record, but if really the worker wanted it to be produced he would have produced the same. It has not caused any prejudice to him.

20. It is argued on behalf of the worker that Mr. Kanchan was a paying cashier on 21-8-1989 and the workman was passing on the voucher for scrutinising the payment voucher to Kanchan for payment to be made to the customers and the staff. He was material witness. But he was not examined by the management. It is therefore tried to submit that he is prejudiced. I do not find any merit in it. It is

the choice of the management to examine the witness to support the charges. The worker had an opportunity to call Kanchan as his witness but he did not avail of the same. It is not his case that even though he wanted to examine him he was not allowed to do so. I therefore find no merit in this contention also.

21. It is tried to argue on behalf of the workman that the subsistence allowance was not paid to him as per the rules. To substantiate this Thomas produced additional documents alongwith Exhibit-15 and affirmed to that fact at Exhibit-22. As against that Mohan Narhar Gadkari (Exhibit-31), the management representative affirmed that whatever amount due as the subsistence allowance was paid to the worker. There are no dues as suggested by him. Normally the non payment of subsistence allowance at an appropriate rate is taken into consideration for coming to the conclusion that the inquiry is against the Principles of Natural Justice. When it is found that the worker was not in a position to attend the inquiry proceedings, that he was not in position to defend the case because of it and no other case. Furthermore before the Conciliation Officer on 24-11-94 it was agreed between the parties regarding the subsistence allowance. The Assistant Labour Commissioner, Bombay had mentioned that the issue regarding payment of subsistence allowance to the workman is resolved by way of payment to the tune of Rs. 7,138.55 ps. on 11-1-94. As this is so it cannot be said that now that matter is in dispute.

22. For all these reasons I come to the conclusion that the inquiry which was held against the workman was as per the Principles of Natural Justice. The inquiry officer had given his report which is at Exhibit-5/90. The management had examined Ambike Assistant Accounts Officer, Sharma Senior Accounts Officer, Wani, Sr. Clerk for the incident dated 21-8-89 and Dhound and Gonsalves for the incident dated 23-8-89. So far as Wani is concerned he had categorically stated that he was not offended by the words of the worker by which he asked him to go out. According to him even though the workers tone was louder but normally that is his way of talking. He was not offended by his behaviour Wani obviously was not offended. But that is to be seen is whether the workmans whole conduct is of insubordination or disobedience to any lawful and reasonable orders of the superior or whether his behaviour was disorderly in the working hours. The deposition to these witnesses for the incident dated 21-8-89 which were considered by the enquiry officer in detail and the deposition of Dhound and Gonsalves for the incident dated 23-8-89 which clerly proves the charges against the workman. Admittedly on 21-8-89 between 10.30 A.M. and 10.40 A.M. he stopped the work for bringing the cup of coffee and was not doing the job. His superiors asked him to start the work he refused to do so for the reasons that the ad-hoc committee had issued a letter to do the work as per the rules. His utterances, behaviour which is affirmed by these witnesses clerly proves the charges against him. So is the case of the incident dated 23-8-89. I fully support the reasons given by

the Enquiry Officer for coming to the conclusion. For all these reasons I record my findings on the issues accordingly and pass the following order :

ORDER

The reference is not tenable, hence disposed off.

S. B. PANSE, Presiding Officer

नई दिल्ली, 15 जुलाई, 1997

का.आ. 1970 --औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार में. पी. पी. सी. गुल. के प्रबन्धतन्त्र के संबद्ध निरोजकों और उनके कर्मचारों के बीच अनुबंध में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं -2), मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/7/97 को प्राप्त हुआ था।

[सं. एल-20040/90/94-आईआर(सी-I)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 15th July, 1997

S.O. 1970.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 2), Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BPCL and their workmen, which was received by the Central Government on 14-7-1997.

[No. L-20040/90/94-IR(C-I)]
BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/27 of 1995

Employers in relation to the Management of
Bharat Petroleum Corporation Limited.

AND

Their Workmen.

APPEARANCE :

For the Management : Mr. R. S. Pai,
Advocate.

For the Workmen : Mr. M. B. Anchan.
Advocate.

Mumbai, dated 26th June, 1997

AWARD—PART-II

On 5-2-97 by Part-I Award I came to the conclusion that the domestic inquiry which was held against the workman was against the Principles of Natural Justice and the findings of the inquiry officer are on the basis of the evidence before him. It was because the inquiry was ex-parte. The management was then allowed to lead evidence to justify its action.

2. The facts which had given rise to present Industrial Dispute can be summarised in nutshell as follows :

Avinash Waghmare was working with the Bharat Petroleum Corporation Limited. He was dealing with the petrol and diesel gas. The result was that he was falling sick. He was absent on several days between 1986—1989. Later on in view of the absenteeism he was given a charge-sheet dated 13-10-89 on the ground for habitual absence without leave. Thereafter a domestic inquiry was held against him and the inquiry officer came to the conclusion that the charges are proved. On the basis of the report of the inquiry officer the disciplinary authority dismissed the worker from the service.

3. Now the issues that fall for my consideration and my findings thereon are as follows :

Issues	Findings
1. Whether the action of the management in dismissing Waghmare w.e.f. 15-3-91 is justified ?	No, converted into termination.
2. If not, what relief the workman is entitled to ?	As per award.

REASONS

4. The management examined Gopal Krishna M. Naik (Ex-18) Deputy Manager (Industrial Relations) to justify its action. It also relied upon the documents on the record which are produced alongwith Exhibit-5. As against it Avinash Waghmare (Ex-20) the worker affirmed to support his claim. He also relied upon the photo copies of the medical certificates which he produced alongwith (Exhibit-8).

5. Mr. Anchan, the Learned Advocate for the workman vehemently argued that the charge-sheet which was issued to the workman is not proper, not clear and it has caused prejudice to the workman. Mr. Pai, the Learned Advocate for the management on the other hand submitted that this submission is without merit. I find substance in the contention of the management. It can be seen that on 22nd June 1989 (Ex-5)pg. 33) the management

issued show cause notice to the workman. This notice is very detailed one. It is mentioned in this notice how many days he remained absent. It reads as follows :

Year	No. of days absent without prior permission/intimation authorised leave
1989 (till 31st May)	67 days
1988	244 days
1987	256 days
1986	221 days

To give more specific details and to quote the recent instance, in the month of March 1989 you were absent without intimation, prior permission/leave for a total number of 26 days for the periods from 1-3-89 to 6-3-89, from 9-3-89 to 24-3-89 and from 27-3-89 to 31-3-89. You were issued letter ref. SEW : 103.6 dt. 17-3-89 for immediate resumption, but you joined duties only on 25-3-89 without offering any valid explanation for you unauthorised absence."

6. Further in the notice the details are given how the directions were given to him to attend the duties. In other words this show cause notice gives details of absenteeism of the worker without sanction of the leave. Waghmare admits to have received this notice and had replied the same. The reply is at Exhibit-5/pg. 35. He admits that he was absent from duty most of the days from 1986—1988. According to him he was absent due to various types of diseases. He had also written in paragraph-1 of that letter that he was suffering from Jaundice also. In the year 1989 he was in tension of sickness of his daughter. In other words it can be said that he accepts the position that he remained absent from duty on the days mentioned in the show cause notice. He had mentioned that in the month of April 1989 he submitted bills of different doctors. He also accepts the position that he was asked by the management to improve his attendance but according to him due to his sickness and the worries of his daughter he could not improve the situation.

7. Exhibit-5/pg. 26 is a charge-sheet. In this charge-sheet there are no details as mentioned in the show cause notice. But it can be seen that there is a mention of show cause notice and the explanation given by the workman which the management found to be unsatisfactory. Therefore, they charged him habitual absence without leave. It is tried to submit that there are not details in the charge-sheet showing in which year how many days the workman was absent. It can be seen that this is not a criminal trial. What is required is to convey the delinquent the irregularities committed by him.

After reading this charge-sheet I find that the worker was well informed what the charges are against him and for which he has to face the domestic inquiry. I do not find any defect in the charge-sheet which can be said to be caused injustice to the worker. It can be further seen that now when the Tribunal had conducted this inquiry the grievance which is made by the worker that the charge-sheet is not proper has no meaning. He was aware what charges are against him and how to face them.

8. Gopal Krishna Naik (Ex-8) who is conversant with the facts of the case affirms that the photocopies from the attendance register which are produced alongwith Exhibit-5 are correct. It can be seen from this attendance register that what is said in the show cause notice regarding Waghmare's absentism is correct. It is tried to argue on behalf of the worker that even though he was sick he was shown to be absent. There is reason for the same. It is case of the management that the worker remained absent and later on had produced only five medical certificates. When he was not on duty he was marked as absent. Thereafter there was no question of converting the mark 'A' in the attendance register to be sick. It is submitted that the worker had never given an application for getting the leave sanctioned. It appears that he had only produced some certificates. Waghmare nowhere affirmed that he always gave an application alongwith the medical certificates for getting the leave sanctioned in advance or had reported in advance to the management that he is sick, unable to attend the duties and will produce the medical certificates later on. The approach of Waghmare appears to be that he can do anything and the management had to bow before him. This is against the discipline of the office. If one behaves in such a manner then others are instigated to do like that if no action is taken against the person who misbehaves.

9. Waghmare had produced medical certificates alongwith Exhibit-8. They are twenty in number. It can be seen that seven certificates are for the year 1986, one certificate for the year 1987 and six certificates for the year 1989 and five certificates for the year 1990. All these are photocopies. According to Naik the worker had given only five certificates which are at pages 86 to 90 at Exhibit-5. Leaving aside these certificates whatever certificates produced by the workman he had to prove that. He had not examined the doctor to prove the correctness of the medical certificates. It can be further seen that at initial stage his defence was that he is not having those certificates with him. Naturally he had to explain how he got those certificates later on. It is the case of the management that his absence is without any leave. Now he had to prove justification for his remaining absent. I may mention it here that there is no justification to say that he was sick and therefore

he cannot attend the duties. To justify that sickness in normal course one has to inform the authorities immediately that he is sick. When he attends the duties he has to produce the certificate. The worker had not done so. It is not once he had done so but repeatedly. It is therefore rightly argued on behalf of the management that the conduct of the worker clearly speaks of his attitude towards the management.

10. In the cross-examination of Naik nothing had come on the record that the photocopies of the muster roll which are produced on the record are not properly maintained. For the reasons stated above absentism of the workman which is mentioned in the show cause notice is proved. It can be seen Naik had affirmed that letters were written to the worker to join the duties which Waghmare admits to have received. But it appears that he did not comply with them. It can be further seen that not only that after receipt of those letters he had not taken any measure to inform the management that he is sick and he may be given the leave. Waghmare affirmed that whenever he joined the duties he had given the certificates. I am not inclined to accept that the management will produce only five certificates and decline to produce the remaining which were alleged to be produced before it. There is no reason for the management to do so. I therefore find that the worker must not have produced those medical certificates at the relevant time to substantiate his absentism.

11. It can be further seen that in the domestic inquiry also the workman did not produce medical certificates which he produced before the Tribunal. He had not given any explanation why he did not produce them at that time nor he had given any explanation now how he could produce them before the Tribunal. Naik had affirmed that on the basis of the medical certificates in the year 1987 the period covered is 49 days, but he was absent unauthorisedly for 218 days. In the year 1987 the absence covered was for between 3-9-87 to 10-10-87, but he was absent for 256 days. In the year 1988 the medical certificate covers the period from 8-8-88 to 11-8-88. But he was absent for 244 days. For the year 1989 the medical certificates speaks of his sickness between 27-3-89 to 10-4-89 but for that year his total absence was 67 days without permission. He affirmed that the workman used to remain habitual absent without permission. At the time of the argument it is tried to submit that the medical certificates which are produced by the workman practically covers whole period. That itself goes to show that it does not cover the whole period. There is no reason, under such circumstances to justify the action of the worker.

12. At pages 91 to 95 of Exhibit-5 letters written by Waghmare the worker are produced when he tried to join the duties after absentism. After

perusal of those letter except one it can be seen that he did not inform the management in advance regarding his sickness or absentism. There does not appear to be a prayer to the management to condone the delay in making the application. The whole approach appears to be quiet different and cannot be accepted.

13. In A.M. Ishwarchar and Executive Engineer Electrical 1995 ILLJ 1065 His Lordships observed that when there is habitual absence which is a gross misconduct then there should not be misbelieved sympathy. It is observed that incidence of habitual absence required to be dealt with firmly and it is very much in public interest such gross misbehaviour requires to be very firmly dealt with. Mr. Pai, the Learned Advocate for the management submitted that in that case the order of dismissal was converted into termination. Here in this case even if the order of dismissal is converted into termination the management had no objection and they will pay all terminal benefits. Under such circumstances I am inclined to cover the order of dismissal into the order of termination. In the result I record my findings on the issue accordingly and pass the following order :

ORDER

The action of the management of Bharat Petroleum Corporation Ltd. Bombay of dismissing the services of Avinash Waghmare w.e.f. 15-3-91 is converted into that of termination.

The management is directed to make the payment of terminal benefits to the worker, within three months from the date of the publication of the Award.

S. B. PANSE, Presiding Officer

नई दिल्ली, 15 जुलाई, 1997

का.आ. 1917—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में एयर इंडिया के प्रबन्धतन्त्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/7/97 को प्राप्त हुआ था।

[सं. एन-11012/7/87-डी-II(बो/आईआर(सी-I)]

ब्रज मोहन, ईस्क अधिकारी

New Delhi, the 15th July, 1997

S.O. 1971.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi, as shown in the Annexure in the Indus-

trial Dispute between the employers in relation to the management of M/s. Air India and their workmen, which was received by the Central Government on 14th July, 1997.

[No. L-11012/7/87-D.II(B)IR(C-I)]

BRAJ MOHAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 55/88

In the matter of dispute between
Shri N. K. Sethi, through
The Assistant Secretary,
Air India Employees Guild,
B-98, Neeti Bagh, New Delhi.

Versus

The Personnel Manager
Air India,
Himalaya House,
Kasturba Gandhi Marg,
New Delhi.

APPEARANCES :

Shri N. K. Sethi—in person.

Miss Leena Sharma—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012/7/87-D.II(B) dated 24th March, 1988 has referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the Management of Air India, New Delhi in not protecting the pay of Shri N. K. Sethi, on his transfer to the post of Clerk is justified? If not, to what relief the workman is entitled to?”

2. The workman in his statement of claim alleged that Management was an “Industry” and the claimant was the workman “guild” was a lawful organisation engaged in the representative capacity and the claimant N. K. Sethi was one of the members of the said ‘guild’ Shri N. K. Sethi was employed by the Management and he joined his services w.e.f. 16th May, 1978 at Bombay under the designation of Canteen Assistant and his grade was modified to Rs. 320. He used to perform the duties in the Canteen Section/Establishment department of the Management and nature of duties were purely clerical. The workman worked in the grade Rs. 320 for the period 1978 to 1981 and was promoted from the post of Canteen Assistant to the post of Senior Canteen Assistant and his basic pay came to Rs. 600.

3. He met with an accident and during the course of their employment at Bombay in the year 1983 he was compelled to receive proper treatment for 8 months and for that period full payment of salary/wages was made by the management and lawful increments were also allowed to him during this period. The accident resulted in many kinds of complications inspite of best treatment but the workman joined his duties under the medical advise. The medical experts were in favour of his transfer to Delhi which was his home town. The workman made an application for his transfer to Delhi and the management accepted his request but the management malafidely resorted to unfair labour practice and victimisation deliberately. The workman was not given his seniority, was placed in the lower grade with basic pay of Rs. 390 and was ranked as junior most amongst the said category. He was also denied the transfer benefits. He joined his duties on 27th August, 1984. Certain instances came to his knowledge and he orally protested for the same and ultimately by writing letter dated 17th May, 1985 the workman informed the guild regarding his grievances and requested for all kinds of assistances and the present industrial dispute was raised before the appropriate government. The 'Guild' in this statement of claim has alleged that the workman has been discriminated, he was entitled to the same grade as he was being paid at Bombay, was also entitled to all arrears arising out of less payment and the management was guilty of unfair labour practice and victimisation. It has further been alleged that the workman was entitled to protection of his basic pay which he was denied. There was violation of section 9(a) of the I.D. Act. The action of the Management was fully repugnant to the provisions of the Industrial Employment (Standing Orders) Act read with Model Standing Orders. There were instances of protection of pay in respect of Mr. Modgil, Mr. Kalkal, Mr. Raj Singh, Mr. K. C. Ramachandran and Mrs. Anjali Nair. It has been finally prayed in this statement of claim that the action of the management in not protecting the pay of Shri N. K. Sethi on his transfer be held unjustified and illegal and all benefits be got paid to the workman.

4. The Management in its written statement alleged that the workman joined Air India as Canteen Assistant in the Personnel Department at Bombay on 16th May, 1978 in the then scale of Rs. 150—640 which was subsequently revised to Rs. 320—910. He was promoted to the post of Senior Canteen Assistant in the scale of Rs. 600—1000 w.e.f. 1st January, 1981 and was confirmed in the said post on 1st January, 1982. The workman Mr. Sethi requested for transfer to the management in view of severe back ache, gastric acidity alongwith depression. His transfer to Delhi was recommended by the Senior Medical Officer of the

Corporation. There was no post of Senior Canteen Assistant available at Delhi to accommodate Mr. Sethi who requested for voluntary transfer. His request for transfer to Delhi as clerk was considered favourably and he was accordingly informed that his basic pay will be fixed at Rs. 390 P.M. in the scale of Rs. 320—700 and he would be junior most amongst clerical category including preference in the Northern Indian Region. It was also made clear to him that he will loose his claim for seniority as Senior Canteen Assistant which he was holding then. Since the transfer was being made on the voluntary request of the workman so no transfer benefits would be admissible to him. The terms and conditions mentioned in the letter were accepted by Mr. Sethi in the acceptance form. He was complaining of his Airlines to the effect that he developed health problems on account of some psychological effects of being away from the members of his family as mentioned by him in his various representations. The workman had requested the management for protection of his salary but was informed that his request could not be acceded to and **he accepted the offer of the management.** The Management in its written statement has also referred to the cases stated by the workman in his statement of claim wherein it has been stated that Modgil's case was not a case of family transfer. Mr. S. K. Kalkal was also transferred in the same capacity and on the same salary without transfer benefits. The salary of Shri K. C. Ramachandran was regulated on his appointment to the post of Apron Supervisor in accordance with the Regulation 14 and his salary was fixed at the minimum of pay. No discrimination was done against the workman as stated by the management in its written statement.

5. The Management in support of its evidence examined Shri D. S. Kohli MW1 while the workman Shri N. K. Sethi appeared as WW1.

6. I have heard the representatives for the parties and have gone through the record.

7. The workman representative has urged that the salary of the workman had met with an accident while performing the duties of the management has been arbitrarily reduced. He has also urged that the discrimination has been done with the workman while such benefits have been granted to other employees in the similar situations. He has also urged that the workman was not aware of the rules at the time of his submitting the request for transfer and as such could not be punished which would affect throughout his service career.

8. The management representative on the other hand has urged that there was no discrimination while fixing the salary of the workman and there has been no violation of any rule by the manage-

ment in this regard. The management had intimated to the workman of the consequence that would follow acceptance of his request for transfer and he had rightly agreed to the same. The management has also further alleged that the transfer took place in the year 1984 and he got this reference made only in 1988. Meaning thereby that he had accepted his voluntary transfer and had worked on the due post for a pretty long time when he was insisted to raise this dispute. There was no discrimination or any resort to unfair labour practice or victimisation by the management. On careful perusal of the points urged by the representatives for both the parties and the record produced before me by the parties I am of the opinion that there has been no reference in the statement of claim or in the evidence of the workman or in the written arguments regarding violation of any particular rule governing the service conditions of the employees under the management. The workman representative has not been able to show me as to under what provision of law/rules/laws the salary of the workman who had voluntarily asked for his transfer from Bombay to Delhi could be protected. The request of the workman in writing for transfer is not disputed and it is also not disputed that he was informed all the consequences that would follow his request for transfer to lower post from Bombay to Delhi. The whole case of the workman repeatedly state that humanitarian and compassionate grounds have been ignored by the management. If there has been any such violation the proper authority to look into this grievance could be the management itself only and not the Court or Tribunal. The Tribunal has to be guided by certain service rules & regulations & unfortunately the workman representative has not been able to pin point any rules under which the salary of the workman could be protected. The court/Tribunal cannot take decisions on compassionate grounds because that was the subject matter for the employers to look into. The cases referred by the workman in his statement of claim was not at all identical with the case of the workman and there could be no comparison between the two. The whole of the statement of claim does not at any stage show as to what was legally due to the workman which has been taken away by the management or the management has resorted to any unfair labour practice or victimisation. The management, however, on the other hand has stated by the workman himself in his statement of claim given him full wages for a period of 8 months when he was under the treatment of the medical officer. He was provided the best medical aid possible as admitted by the workman himself which was one of the duties of the management but protection of pay is to be guided on the certain rules and regulations and the voluntary request of the workman for his transfer from Bombay to Delhi would necessarily entail his 1887 GI/97—9.

appointment in the lower scale of the lower category post. A person working in a lower category post cannot be given the pay of a higher category post and doing such would amount to discrimination not with the workman but with other employees who were working on similar post alongwith the workman. The principle of equal pay for equal work of the persons of the same category doing same and similar jobs could not be discriminated against each other. I, therefore, am of the opinion that the workman has not been able to specify that the action of the management was in any manner unjustified. It is held that the action of the management in not protecting the pay of the workman was justified. However, the parties are left to bear their own costs of this dispute.

3rd June, 1997.

GANPATI SHARMA, Presiding Officer.

नई दिल्ली, 15 जुलाई, 1997

का.आ. 1972.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में इंडियन एयरलाइन्स के प्रबंधन के संबंध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/7/97 को प्राप्त हुआ था।

[सं. एन-11012/26/96-आईएमए (सी-1)]

ब्रज मोहन, डेस्क अधिकारी

New Delhi, the 15th July, 1997

S.O. 1972.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Airlines and their workmen, which was received by the Central Government on 14-7-97.

[No. L-11012/26/96-IR (C-I)]

BRAJ MOHAN, Desk Officer.

ANNEXURE

BEFORE SHRI GANPATI SHARMA : PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL : NEW DELHI

I.D. No. 103/96

In the matter of dispute between :

Shri Ashok Kumar,
D-256, Nehru Vihar,
Delhi-54.

Versus

The Senior Deputy Manager,
Personnel Services,
Indian Airlines, I.G.I. Airport,
New Delhi.

APPEARANCES :

None for the workman.

Shri Alok Chatterjee for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-11012/26/96-IR (Coal-I) dated 21-11-96 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the demand for reinstatement by Shri Ashok Kumar claiming that he was illegally terminated w.e.f. 21-9-1988 by the management of Indian Airlines is legal and justified? If so, to what relief is the said workman entitled?”

2. The case was fixed for the appearance of the workman to whom registered A.D. notices were sent as he had absented on 27-3-97 after putting an appearance on 3-3-97. Neither he appeared himself nor his authorised representative appeared in the court nor any statement of claim was filed for which opportunity was granted to his representative on 13-3-97. It appeared that the workman is not interested in pursuing this dispute and no dispute award is given in this case leaving the parties to bear their own costs
20th June, 1997.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 8 जुलाई, 1997

का. प्रा. 1973.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन आयल कॉर्पोरेशन के प्रबन्धन के संरक्षित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 8-7-97 को प्राप्त हुआ था।

[सं. एस्-30012/73/89-आईआर विविधआई आर(सी-1)]
सनातन, डेस्क अधिकारी

New Delhi, the 8th July, 1997

S.O. 1973—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Indian Oil Corporation and their workmen, which was received by the Central Government on 8-7-1997.

[No. L-30012/73/89-IR (Misc)/IR (C-I)]
SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 23/90

In the matter of dispute :

BETWEEN

Shri N. G. Dass, Operator 'A' (Production) O.M.S.I.
Employee No. 65525/75937,
Mathura Refinery,
Q. No. 8/12, Rednery Nagar
Mathura (U.P.) Pin-281006.

Versus

The Management of Indian Oil Corporation,
Mathura Refinery,
Mathura.

APPEARANCES :

Shri P. T. Mathews—for the workman.

Shri Anand Chandjee on behalf of Shri Raj Birbal—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-30012/73/89-I.R. Vividh dated 21-2-90 has referred the following industrial dispute to this Tribunal for adjudication :

“Whether the Executive Director, Mathura Refinery, was justified in discharging Shri N. G. Dass, Operator, w.e.f. 5-7-88 as per para 9(3) of Model Standing Orders? If not, to what relief the workman concerned is entitled?”

2. The workman in his statement of claim has alleged that he was appointed as Operator 'D' on 19-8-78 in Barauni Refinery and was transferred on promotion to Mathura Refinery on 2-6-91 as Operator 'C'. He was promoted as Operator 'A' in the year 1985. He was granted leave from 6-2-88 to 9-2-88 with permission to leave the Head Quarter and went to Patna where he fell sick on 7-2-88. He took medical treatment from 7th February to 27th February, 88 from Dr. K. Kumar a renowned doctor of Patna Medical College for Jaundice. He was not cured and he then remained under the treatment of Dr. K. P. Verma from 28th February, 88 till 12th January, 89. He was declared medically fit on 12-1-89 and he reported for duty on 10th of January, 89 as he was told on 16-1-81 and 17-1-89 to come later. As per his assertion in the statement of claim he had been sending intimation regarding his sickness to the authorities concerned vide letter dated 14-4-88, 11-5-88, 16-6-88, 1-7-88, 2-8-88, 1-11-88, 1-12-88 and 31-12-88. Out of these letters dated 1st December, 88 and 31st December, 88 were sent by registered post vide receipt No. 751 and 758 respectively. However, when he reported for duty there was no reply from the management but was told that he has already been discharged from the service under the Employees Standing Order w.e.f. 5-7-88. He moved the Assistant Labour Commissioner for conciliation but no conciliation was arrived at and the matter was referred by the Government to this Tribunal for adjudication. It has been alleged in the statement of claim that the action of the management was arbitrary, unjust and fair and reserve to be aside.

3. The Management in its reply alleged that the workman was granted 4 days leave and was supposed to resume duty on 10th of February, 88 but he did not report for duty. The Management has further alleged that no medical certificate of the workman was ever received with any of his alleged letters and even photo copy of the letters which the workman has filed. There is no mention of any medical certificate being sent alongwith them. The Management had been writing him time and again and on 23rd June, 88 he was advised to report for duty with satisfactory explanation by 4th of July, 88 but he neither report for duty nor did he render its explanation. A telegram was also sent

to him on 30-6-88 advising him to report for duty but there was no compliance of the telegram and he continued to remain absent. The Management according to the provisions of the Model Standing Orders applicable to its employees discharged him from the service on 5-7-88 after having given him sufficient opportunities. There was no violation of any rules or principles governing the service conditions of the workman on the part of the management and as such the action of the management was fully justified.

4. The Management examined Shri S. L. Verma, Personal and Administrative Manager while the workman himself appeared as WW-1. Several documents are produced by both the parties.

5. I have heard representatives for the parties and have gone through the record.

6. The representative for the management has urged that the action of the management was according to the Model Standing Orders applicable to the category of workman and no illegality was committed while discharging him under these standing orders. Moreover, the management had issued registered letters to the workman as well as telegram vide which he was advised to satisfy the management about his sickness and also advised him to appear before the Chief Medical Officer of Patna or the Medical Officer of the Management to prove his absence due to sickness. Not only this but the management had also sent the registered letters on all the four opportunities available with the management including the opportunities given by the workman in his letter but he never reported for duty nor applied with those letters. The Management representative has thus urged that there was nothing wrong in the order of the Management which has been passed in the case of this workman.

7. The representative of the workman has, however, on the other hand urged that the workman was seriously sick suffering from jaundice and had got himself treated from Dr. K. Kumar of Patna Medical College and later on by Dr. K. P. Verma from 7-2-88 to 27-2-88 and 28-2-88 to 12-1-89 respectively. Since he was not medically fit so he could not report for duty nor comply with the orders of the management. He has further urged that 'U.P.C.' receipts were filed by him to show his genuineness regarding the proof of his sickness and request for leave. The action of the management was in humane and as such they did not consider it appropriate to grant leave to the workman who was seriously sick but instead thereof he decided to proceed for his discharge from service taking benefit of the so called standing orders. He has also referred to some judgments of the Hon'ble Higher Courts in support of his assertion because according to him absence from duty was not so serious a matter for which the punishment of discharge from service should be awarded.

8. On careful perusal of the points urged before me by the representatives for the parties, I am of the considered view that the workman in this case has been highly negligent, delinquent and has not cared even to reply any letter of the management. There are two medical certificates produced in this case by the workman one is dated 27-7-88 and the other is dated 12-1-89. Certificate dated 27-2-88 which has been denied by the management is Annexure 13 of the statement of claim. This certificate does not bear the signature of the workman and the Doctor who had issued this certificate has not been produced by the workman to prove the same. Moreover, the certificate copy of which is Annexure 13 was never sent to the management by registered post and the same is not available in the record of the management. The sending of this certificate also becomes doubtful because there is a letter dated 24-2-88 in which he has asked for 15 days leave. There is no letter in the record of the management dated 27-2-88 alongwith this though certificate was alleged to have been sent. Letter dated 12-3-88 also does not find any mention of the medical certificate sent by the workman. The receipt of this letter dated 12-3-88 has been admitted by the management and the photo copy of the same has been produced. Moreover in none of the letters written by the workman he has acknowledged the receipt of any letter from the management though the management had sent these letters by registered post on the addresses given by the workman. One letter

was sent to 4 different addresses to the workman in order to ensure its delivery to him. The management which is a Government of India Undertaking cannot be expected to fabricate or forge any record in respect of the medical certificates of the workman. A perusal of a letter dated 21-4-88 sent by the workman shows that he left some space after the word 'doctor' for writing the name of the doctor under whose treatment he was but did not write his name and thereafter wrote the word 'therefore'. Similarly, in letter dated 3-5-88 also the workman wrote that he was under treatment of good do and has left the space thereafter. He has also cut the words 'of good do'. He has left the place under whose treatment he was but he did not write place name of the doctor presumably that he was not under the treatment of any doctor. Moreover, when the management had sent him letter he was expected to reply to those letters though he has denied the receipt of the same in the court. The letters which are registered one are supposed to have been received by the addressee in his statement of claim. He has not mentioned that he had fallen sick and had taken sick leave for four days from 6/2 to 9/2 though in his written arguments his representative has stated that he was sick right from 6/2. In his statement of claim he stated that he fell sick on 7-2-88. A careful perusal of all these points simply show that the workman did not intimate the management regarding his sickness and nor sent any medical certificate. It was the duty of the workman to inform the management about his sickness if he was actually sick and should have gone to the Chief Medical Officer or the Medical Officer of the Management as advised by the Management.

9. Clause 9(3) of the Model Standing Orders provide as follows :

"3. If the workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he (a) returns within 8 days of the expiry of leave and (b) explains to the satisfaction of the (employer or the Officer specified in this behalf by the employer) his inability of return before the expiry of his leave. In case the workman loses his lien on his appointment, he shall be entitled to be kept on the badlies list."

10. This provision of the standing order deals with the inability of the workman returning on duty after the expiry of leave. The management has complied with the requirements of the standing orders and had waited sufficiently for the workman after the expiry of the leave and sent him notice also by registered post on four different available addresses and also a telegram finally asking him to report for duty but the workman for reasons best known to him did not bother to report for duty or to get himself medically examined from the Medical Officer of the Management. The standing orders constitute the force of law and are binding on the workman as well as the management. I am, therefore, of the opinion that the action of the management for discharging the workman as per the Model Standing Orders was fully justified. Parties are, however, left to bear their own costs.

Dated : 19th May, 1997

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 8 जुलाई, 1997

का.भा. 1974.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसर्जन में, केन्द्रीय सरकार में, भारत कोकिंग कोल लि. के प्रबन्धतन्त्र के सदस्य नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण (सं. 1) धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-7-97 को प्राप्त हुआ था।

[सं. एम-20012/113/91-घाईघार(सी-1)]

सनातन, डैस्क अधिकारी

New Delhi, the 8th July, 1997

FORM H

S.O. 1974.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, (No. 1), Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 8-7-1997.

[No. L-20012/113/91-IR (C-I)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under Section 10(1)(d) (2-A) of the Industrial Disputes Act, 1947

Reference No. 90 of 1991

PARTIES :

Employers in relation to the management of Kessurgarh Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen

PRESENT :

Shri Tarkeshwar Prasad, Presiding Officer.

APPEARANCES :

For the Employers—Shri S. N. Sinha, Advocate.

For the Workmen—Shri D. Mukherjee, Secretary Bihar Colliery Kamgar Union.

STATE : Bihar

INDUSTRY : Coal

Dated, the 23rd June, 1997

AWARD

By Order No. L-20012/113/91-I.R. (Coal-I) dated 30-9-91 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the management of Kessurgarh Colliery in Block-II Area of M/s. B.C.C.L. is justified in denying regularisation to S/Sri Nakul Mahato and Lalteni Mahato in the post of Haulage Operator with wage rates of Cat-IV as per NCWA-III and NCWA-IV w.e.f. 1984 ? If not, to what relief the workmen are entitled ?"

2. The dispute has been settled by the management and the sponsoring union out of the Tribunal. A memorandum of settlement has been filed in this Tribunal. I have gone through the terms of settlement and I find them quite fair and reasonable. I allow the prayer and pass an award in terms of the settlement. The memorandum of settlement shall form part of this award.

3. Let a copy of this award be sent to the Ministry as required under Section 15 of the I. D. Act.

TARKESHWAR PRASAD, Presiding Officer

For of Memo of Settlement

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT DHANBAD

In the matter of Reference No. 90 of 1991

PARTIES :

Employers in relation to the Management of Kessurgarh Colliery in Block-II Area of M/s. BCCL.

AND

Their Workmen S/Sri Nakul Mahato and Lalteni Mahato.

Memo of Settlement already arrived at between the Management of Kessurgarh Colliery and the Workman and their representative on following terms and condition on 3-8-95 before the Representative of Management and workmen on following terms and conditions.

That the case is pending before Industrial Tribunal No. 1 at Dhanbad for adjudication the parties agreed to settle the disputes on the following terms and conditions in final settlement of the dispute.

(a) That they be plead in Category IV with immediate effect (3-8-95).

(b) They have been paid a lump-sum amount of Rs. 600 (Rupees six hundred) as difference of wages for back period.

Thus resolved the dispute in toto and Union agreed not to raise further disputes in future.

The six copies of Settlement are filed before Tribunal in full and final settlement of the disputes and award may accordingly be passed.

For the Workmen :

Sri R. P. Singh
Concerned Workmen :
Nakul Mahato
Lalteni Mahato

For the Management :

(P. C. Sood)
G.M. with name
(U. P. Singh)
R.M. with name
Dy. Personnel Manager

नई दिल्ली, 11 जुलाई, 1997

का.प्र. 1975:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धन के संवद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-7-97 को प्राप्त हुआ था।

[संख्या एल-12012/59/93-आई.आर. (बी-II)]

सनातन, ईस्क अधिकारी

New Delhi, the 11th July, 1997

S.O. 1975.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the industrial dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 10-7-1997.

[No. L-12012/59/93-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NEW DELHI

I. D. No. 67/93

In the matter of dispute :

BETWEEN

Shri S. K. Sanon,
through the State President,
Punjab National Bank Employees Union (U.P.),
11/123 Krishanpur, Rajpur Road,
Dehradun-248009.

Versus

Regional Manager,
Punjab National Bank,
Dehradun Region,
18-A New Road,
Dehradun-248001.

APPEARANCES :

Shri S. K. Sanon in person.

None—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/59/93-IR (B-II) dated 1-9-93 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Punjab National Bank in debarring Shri S. K. Sanon, Special Assistant, permanently from Officiating/promotion to Officer in JMG-Scale 1 is legal and justified? If not, what relief the workman is entitled to and from what date?"

2. The workman Shri S. K. Sanon made statement that since he has retired from the bank service on 31-7-96 and he does not want to pursue this case and may be permitted to withdraw the same. The request of the workman is allowed. The dispute is allowed to be withdrawn and no dispute award is given in this case leaving the parties to bear their own costs.

Dated : 3rd July, 1997

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 11 जुलाई, 1997

का. आ. 1976 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार एस.सी.सी.एल. के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में, औद्योगिक अधिकरण, हैदराबाद के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-7-97 को प्राप्त हुआ था।

[संख्या एल—22012/517/95-आई आर (सी-II)]
एस रविश अली, डेस्क अधिकारी

New Delhi, the 11th July, 1997

S.O. 1976.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Hyderabad as shown in the Annexure. in the industrial dispute between the employers in relation to the management of S.C.C. Ltd. and their workman, which was received by the Central Government on the 8th July, 1997.

[No. L-22012/517/95-IR (C-II)]
S. RAVISH ALI, Desk Officer.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT HYDERABAD

Present :—Sri V. V. Raghavan. B.A., LL.B.,
Industrial Tribunal-I

Dated : 19th day of February, 1997

INDUSTRIAL DISPUTE NO. 134 OF 1996

Between :

Shri D. Seetharami Reddy,
Chief Vice President,
Singareni Miners & Engineering
Workers Union, H. No. SD-49,
Sreerampur Colony,
Sreerampur-504303.

.. Petitioner

And

The General Manager,
S.C. Co. Ltd.,
Sreerampur (P),
Sreerampur-504302.

.. Respondent

Appearances :—

None for the petitioner.

Sri J. Pardhasardhi. Advocate for the Respondent.

AWARD :

This is a reference made by the Government of India, Ministry of Labour, New Delhi by its Order No. L-22012/517/95-IR (C-II), dated 18-10-96 under Section 10(1)(d) and 2A of the I.D. Act, 1947 for adjudication of the following Industrial Dispute.

"Whether the action of the management of M/s. S.C. Co. Ltd., in denying annual increment due on 1-1-88, 1-1-89, 1-1-90, 1-1-91 and 1-1-92 in the pay scale of Rs. 810-46-1178-51-1586 to Sri N. Koteswara Rao, Overman Ravindrakhani No. 8 Incline monetarily upto 30-9-92 is justified or not? If not, what relief the workmen concerned is entitled to?"

2. After receipt of the said reference, the Tribunal has issued a notice to both the petitioner and the Respondent. The respondent received the notice. But the notice sent to the Petitioner was returned unserved. Again a fresh notice was sent to the petitioner as well as concerned workmen, to the address given by him through a letter dt. 10-1-97. The notice was received by him but he did not appear on 19-2-97. When the matter was called on, on that day, neither the petitioner nor the concerned workmen were present and even no representation was made on their behalf.

In view of the above, it is understood that the petitioner has not interested to prosecute the matter. Hence the I.D. is closed.

Given under my hand and the seal of the Tribunal, this the 19th day of February, 1997.

V. V. RAGHAVAN, Industrial Tribunal.

नई दिल्ली, 16 जुलाई, 1997

का.आ. 1977—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार मिलिटरी फार्म, पिम्परी के प्रबंधन के संबंध निरोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, पुणे के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-97 को प्राप्त हुआ था।

[संख्या: एन-14012/21/94-आई.आर. (बीयू)]

के. वी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 16th July, 1997

S.O. 1977.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Pune as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Military Farm, Pimpri and their workman, which was received by the Central Government on 16-7-97.

[No. L-14012/21/94-IR(DU)]
K. V. B. UNNY, Desk Officer.

ANNEXURE

Before Shri P. S. Shinde,

Presiding Officer, I/C. First Labour Court, Pune.

Ref. (IDA) No. 304/95.

The Officer Incharge,

Military Farm, Pimpri, Pune-17. .. First Party.

AND

Shri Namdeo Bhau Kamble

C/o. Military Farm, Pimpri, Pune-17. .. Second Party.

Appearances :—Both parties absent.

AWARD

1. The Desk Officer, Govt. of India, Ministry of Labour New Delhi has referred this reference under Clause (d) of Sub Section (1) of Section-10 of the Industrial Disputes Act 1947 (14 of 1947) for adjudication of the dispute within the meaning of Section 2-A of the said Act between (1) The Officer Incharge, Military Farm, Pimpri, Pune-17 (first party) and (2) Shri Namdeo Bhau Kamble (second party), over the following demands.

“Whether the action of the management of Military Farm, Pimpri in terminating the services of Shri Namdeo Bhau Kamble, was lawful and proper? If not, what is the relief to which the workman is entitled to?”

2. Both the parties are absent. No steps taken by the second party so as to proceed with the matter. No S.C. filed by the second party. Since the matter is old one and therefore the Reference stands disposed off not being substantiated by evi-

dence. No order as to costs. An award be prepared accordingly.

Pune;

Dated 22-4-97.

P. S. SSKIND, Presiding Officer

नई दिल्ली, 16 जुलाई, 1997

का.आ. 1978—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार डिवाइजनल इंजीनियर (आर ई) दूरसंचार विभाग नई दिल्ली के प्रबंधन के संबंध निरोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोटा के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-7-97 को प्राप्त हुआ था।

[नं. एन-40012/31/89-डी-2(बी)]

के. वी. बी. उण्णी, डेस्क अधिकारी

New Delhi, the 16th July, 1997

S.O. 1978.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Kota as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Divisional Engineer (RE), D/o Telecom., New Delhi and their workman, which was received by the Central Government on the 16-7-97.

[No. L-40012/31/89-D. 2(B)]

K. V. B. UNNY, Desk Officer.

अनुबंध

न्यायाधीश औद्योगिक न्यायाधिकरण केन्द्रीय कोटा/राजस्थान निर्देश प्रकरण क्रमांक : आ. न्या.-16/89

दिनांक स्थापित : 3-11-89

प्रसंग : भारत सरकार श्रम मंत्रालय, नई दिल्ली के आवेदन संख्या एन 40012/31/89-डी- 2 (बी) दिनांक 23-10-89.

औद्योगिक विवाद अधिनियम, 1947

मध्य

रामनाथ रेगर द्वारा श्री दिनेश राय द्विवेदी,
117 प्रताप नगर दावाबाड़ी, कोटा

—प्राथी श्रमिक

एवं

डिवाइजन इंजीनियर (आर ई) दूर संचार विभाग,
बी-1/10 कम्यूनिटी सेक्टर, जनकपुरी, नई दिल्ली।

—प्रतिपक्षी नियोजक

उपस्थित

श्री आर. के. शास्त्रान, आर. एच. जे. एस.

प्राथी श्रमिक की ओर से प्रतिनिधि :—श्री दिनेश राय द्विवेदी
प्रतिपक्षी नियोजक की ओर से प्रतिनिधि :—श्री ए. बी. सोरन
अधिनियम दिनांक 7-6-97

: अधिनियम :

भारत सरकार श्रम मंत्रालय द्वारा निम्न निर्देश औद्योगिक विवाद अधिनियम 1947 (जिसे तदुपरांत "अधिनियम, 1947" से संशोधित किया जावेगा) की धारा 10(1) (घ) व उपधारा (2-क) के अन्तर्गत इस न्यायाधिकरण को अधिनियमार्थ सम्प्रेषित किया गया है :-

"Whether the action of the Divisional Engineer (RE) Deptt. of Telecommunication, New Delhi in terminating the services of Sh. Ramnath Regar, w.e.f. 1-2-88 is justified? If not, what relief the workman is entitled to?"

2. निर्देश न्यायाधिकरण से प्राप्त होने पर दर्ज रजिस्टर किया गया व पक्षकारों को सूचना जारी की गयी। प्रार्थी श्रमिक रामनाथ द्वारा प्रस्तुत क्लेम स्टेटमेंट के अनुसार संक्षेप में तथ्य इस प्रकार हैं कि प्रतिपक्षी नियोजक, डिजीजनल इंजीनियर (आर. ई.) टेली कम्यूनिकेशन विभाग के अधीन श्रमिक के रूप में दिनांक 1-9-86 को नियोजित किया गया था व प्रार्थी ने प्रतिपक्षी के यहां 31-1-88 तक निरन्तर कार्य किया। प्रार्थी को प्रतिपक्षी ने दिनांक 1-2-88 से अचानक बिना कोई कारण बताये व बिना सूचना के सेवा से लेने से मना कर दिया। प्रार्थी के पूछे जाने पर प्रतिपक्षी के अधिकारी सहायक इंजीनियर (टेलीकॉम) (आर. ई.) कोटा ने बताया कि उनकी सेवायें समाप्त कर दी गयी हैं। इस प्रकार प्रार्थी को उक्त तरीके से सेवा से समाप्त करने का कोई कारण नहीं बतलाया गया व न ही कोई सूचना दी गयी और न कोई नोटिस अथवा नोटिस वेतन व मुआवजा अधिनियम की धारा 25-एफ के प्रावधानान्तर्गत दिया गया। अतः प्रार्थी को प्रतिपक्षी द्वारा सेवा से हटाना अवैध घोषित कर पिछले सम्पूर्ण वेतन व समस्त लाभों सहित पुनः सेवा में लिये जाने के आदेश दिये जावे।

3. प्रतिपक्षी की ओर से प्रार्थी के क्लेम का जवाब प्रस्तुत किया गया है कि प्रार्थी का नियोजक तत्कालीन सहायक अभियन्ता कोटा हो सकता था। टेलीकॉम (रेलवे इलेक्ट्रीफिकेशन) का विभाग औद्योगिक विवाद अधिनियम, 1947 के अन्तर्गत "उद्योग" की परिभाषा में नहीं आता क्योंकि टेलीफोन की लाईन के तारों के द्वारा संदेश भेजने का कार्य व टेलीफोन की भारी कार्यवाही न तो बिजनेस प्रोजेक्ट है और न ही गुड्स प्रोड्यूस करना है। यह केन्द्रीय सरकार का सोवरन फंक्शन है इसलिए प्रार्थी का प्रार्थना-पत्र खारिज किया जावे। कोटा में टेलीकॉम रेलवे विद्युतीकरण के अस्थाई प्रोजेक्ट में कार्य चल रहा था जिसमें प्रार्थी को पूर्णतया अकस्मिक तौर पर प्रोजेक्ट कार्य विशेष के लिए तत्कालीन सहायक अभियन्ता द्वारा नियोजित किया गया। यह योजना विद्युतीकरण के अंतर्गत आती है जिसके अंतर्गत दूरसंचार लाईन उखाड़ना एवं नई लाईन बनाने का कार्य किया जाता है। नई लाईन बनाने का कार्य एक बार पूरा होने के बाद पूरा संस्करण रख-रखाव के लिए मेन्टीनेन्स को सौंप दिया जाता है। तत्पश्चात् पनियोजना का कार्य सम्पन्न होने पर पूर्णतया बंद कर दिया जाता है। इस प्रकार प्रार्थी

का नियोजन कार्य विशेष के लिए किया गया तथा योजना समाप्त होने पर प्रार्थी का नियोजन भी स्वतः समाप्त हो गया। इस प्रकार प्रार्थी किसी प्रकार का कोई वेतन व मुआवजा प्राप्त करने का अधिकारी नहीं है। अतः प्रार्थी का क्लेम खारिज किया जावे।

4. प्रार्थी रामनाथ रैगर की ओर से साक्ष्य में स्वयं का तथा एक गवाह कोमल प्रसाद का शपथ-पत्र प्रस्तुत किया गया जिनसे नियोजक प्रतिनिधि ने जिरह की है। प्रतिपक्षी नियोजक की ओर से साक्ष्य में कोई-शपथ-पत्र प्रस्तुत नहीं किया गया है। बहस अन्तिम सुनी गयी व पत्रावली का अवलोकन किया गया।

5. प्रार्थी की ओर से विद्वान प्रतिनिधि ने यह बहस की है कि प्रार्थी ने प्रतिपक्षी के यहां 1-9-86 से 31-1-88 तक निरन्तर कार्य किया एवं इस अवधि में 240 दिन तक कार्य पूर्ण कर लिया था उसके बावजूद भी प्रार्थी को अधिनियम की धारा 25-एफ की पालना किये बगैर नौकरी से हटाया गया इसलिए प्रार्थी को पुनः प्रतिपक्षी के यहां नौकरी पर समस्त लाभों सहित लिये जाने का आदेश दिया जाए।

6. प्रतिपक्षी की ओर से विद्वान प्रतिनिधि ने यह बहस की है कि प्रार्थी ने प्रतिपक्षी की एक विशेष योजना में कार्य किया है जिसमें टेलीकॉम्यूनिकेशन विभाग को रेलवे के द्वारा मांगी गयी पुरानी लाईन को उखाड़ कर नयी टेलीफोन लाईन डालना था जिस कार्य विशेष के लिए ही प्रार्थी को नियोजित किया गया था। प्रार्थी ने स्वीकृत रूप से पोस्टल और टेलीकॉम्यूनिकेशन विभाग में अस्थायी रूप से आकस्मिक श्रमिक का कार्य किया। विद्वान प्रतिनिधि ने अपनी बहस की ताईद में "1996 लेव आई सी 10-59-सब-डिवीजनल इंस्पेक्टर आफ पोस्ट, बैकाम बनान टी जोमफ" की नज़ीर प्रस्तुत की है जिसमें माननीय सर्वोच्च न्यायालय ने यह सिद्धांत प्रतिपादित किया है कि पोस्ट एंड टेलीग्राफ (दूर संचार) विभाग में इस प्रकार के अस्थायी तौर पर कार्य करने वाले कर्मचारियों को अधिनियम, 1947 के प्रावधानान्तर्गत कोई फायदा नहीं दिया जा सकता बल्कि वे सिविल सर्वेंट्स की तारीफ में आयेंगे जिन्हें सामान्य नियमों के तहत लाभ दिया जायेंगे। अतः प्रार्थी कोई राहा प्राप्त करने का अधिकारी नहीं है।

7. प्रार्थी के विद्वान प्रतिनिधि ने उक्त बहस का जवाब देते हुए यह दलील प्रस्तुत की है कि माननीय सर्वोच्च न्यायालय ने ही "1973(52)एफ जे आर 197-बंगलोर वाटर सप्लाई एण्ड सीवरेज बोर्ड बनाम ए राजप्पा" की नज़ीर में "उद्योग" शब्द की विस्तृत रूप से विवचना को है। इस निर्णय के अनुसार वेलफेयर एस्टीमेटिज के तहत किये गये कार्य सोवरन फंक्शन नही माने गये हैं।

8. अब प्रार्थी की साक्ष्य पर गौर करना उचित होगा जिसका विश्लेषण इस प्रकार है-प्रार्थी रामनाथ रैगर ने अपने शपथ-पत्र की जिरह में कहा है कि मैंने कोटा में अपने गाई, लाईन टेस्ट की और पुरानी लाईन गिराने आदि का काम किया। मैंने कोटा में ही लाईन टेलीफोन डालने की विशेष

परियोजना में काम किया था। प्रार्थी के गवाह कोमल प्रसाद ने भी प्रार्थी की जिरह की ताईद करने पृष्ठ स्वीकार किया है कि प्रार्थी ने उक्त कार्य के हुंग खोदने का कार्य किया था।

9 प्रार्थी की उक्त माध्य के विप्लवण से यह स्पष्ट है कि प्रतिपक्षी विभाग द्वारा नयी टेलीकम्यूनिकेशन लाईन डालने के लिए प्रार्थी को सेवा में अस्थायी रूप से नियोजित किया एवं प्रार्थी ने एक विशेष परियोजना के तहत कार्य किया। उसके बाद प्रार्थी को कार्य पर नहीं रखा गया। प्रतिपक्षी पक्ष की ओर से विद्वान प्रतिनिधि ने जो उक्त माननीय सर्वोच्च न्यायालय की नजीर "1996 लेब आई सी 1059-सब डिविजनल इन्स्पेक्टर आफ पोस्ट, बैकाम टी जोसफ" प्रस्तुत की है उसमें माननीय सर्वोच्च न्यायालय ने यह मत प्रकट किया है कि पोस्ट एण्ड टेलीकम्यूनिकेशन विभाग से कार्यरत अस्थायी श्रमिकों को सेवार्थे औद्योगिक विवाद अधिनियम, 1947 के तहत नहीं मानी जायेगी बल्कि सिविल सर्वेण्ट्स की तहत मानी जायेगी जिनकी सेवाएं विभागीय नियमों के अनुसार नय की जायेगी।

10. प्रार्थी पक्ष की ओर से विद्वान प्रतिनिधि ने "1978 (52)एफ.जे.आर. 197" माननीय सर्वोच्च न्यायालय की नजीर प्रस्तुत की है जिसपर मैने पूर्ण रूप से पठन एवं मनन किया। मेरी विनम्र राय में माननीय भयोच्च ने इस नजीर में बहुत ही विस्तृत रूप से "उद्योग" शब्द की व्याख्या की है एवं विशेष रूप से सोसायटी उद्योग माना जायेगा या नहीं, का विचार बिन्दु निर्णयार्थ था। पोस्ट एण्ड टेलीकम्यूनिकेशन विभाग के बारे में इस नजीर में कोई हवाला नहीं है। ऐसी स्थिति में, मैं माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित इस नजीर के सिद्धांत में भर्ती भक्ति समर्थित एवं पाबन्द हूँ, परन्तु इस नजीर के तथ्य वर्तमान मामले के तथ्यों से भिन्न है इसलिए प्रार्थी का इस नजीर से कोई परीक्षा रूप से फायदा प्राप्त नहीं हो सकता।

11. अतः मैं इस निष्कर्ष पर पहुँचा हूँ कि प्रार्थी ने प्रतिपक्षी के यहाँ जो कार्य अपने नियोजनकाल में किया है उसके लिए वह धारा 25-एफ अधिनियम, 1947 के अन्तर्गत कोई फायदा प्राप्त करने का अधिकार नहीं है और उस जो प्रतिपक्षी विभाग द्वारा 1-2-88 से सेवा में पृथक किया गया है वह उचित एवं वैध उद्धारण जाने योग्य है, फलस्वरूप प्रार्थी किसी प्रकार की कोई राहत प्राप्त करने का अधिकारी घोषित होने योग्य नहीं है।

12. अतः उपरोक्त सम्पूर्ण विषय के आधार पर भारत सरकार, श्रम न्यायालय, नई दिल्ली द्वारा सम्प्रेषित निर्देश को इस प्रकार उत्तरित किया जाता है कि डिविजनल इंजीनियर (आर ई) टेलीकम्यूनिकेशन विभाग, नई दिल्ली द्वारा प्रार्थी रामनाथ पंगर को दिनांक 1-2-88 से सेवा में पृथक करना उचित एवं वैध है, फलस्वरूप वह प्रतिपक्षी से किसी प्रकार की कोई राहत प्राप्त करने का अधिकारी नहीं है।

इस अधिनियम के अनुबिधन नकार को निदमात्सार प्रकाशनार्थ निजवादा जाय।

आर.के. चावान, न्यायाधीश

नई दिल्ली 17 जुलाई, 1997

का. आ. 1979 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आफिसर्स ट्रेनिंग एकादमी सी एस डी कैंटीन , मद्रास के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, मद्रास के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 17-7-97 को प्राप्त हुआ था।

[सं. एल. 42012/121/95 आई. आर. (डी. यू.)]

के. बी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 17th July, 1997

S.O. 1979—In pursuance of Section II of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Madras as shown in the Annexure, in the industrial dispute between the employees in relation to the management of Officer Training Academy/CSD Canteen, Madras and their workman, which was received by the Central Government on the 17-7-97.

[No. L42012/121/95-IR(DU)]

K.V.B. UNNY, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL,
TAMIL NADU, MADRAS

Friday, the 25th day of April 1997

Present:—

THIRU S. THANGARAJ. B.Sc., LL.B.,
INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 72 of 1996

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947 between the Workmen and the Management of Officers Training Academy, Madras).

BETWEEN

Miss Grace Juliet,

No. 23, Morrison 2nd Street, St. Thomas Mount,
Madras-600 016.

AND

The Commandant,

Officer Training Academy,

St. Thomas Mount, Madras-600 016.

REFERENCE : Order No. L-42012/121/95-IR(DU), Ministry of Labour, dated 26-8-96, Govt. of India New Delhi.

This dispute coming on for hearing on this day, and the petitioner called absent and not filed claim statement, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue:

"Whether the action of the management of Officers Training Academy/CSD Canteen in terminating the services of Ms. A. Grace Juliet Sr. Sales Girl is just proper and legal? If not, to what relief the workman is entitled?"

Thiru Javid Khan files vakalat for respondent. Petitioner called absent. No representation for petitioner. Industrial dispute dismissed for default of petitioner.

Dated, this the 25th day of April 1997.

S. THANGARAJ, Industrial Tribunal